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THE FAMILY

AN HISTORICAL AND SOCIAL STUDY

BY

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AND

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THE FAMILY.

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[MANY questions relating to the origin of the human race are still unsolved. Whether the human race is the result of some process of development or of an immediate act of creation; whether, if developed from primordial forms of life, it reached the human stage among one tribe only, whence have sprung the various nations, or whether it attained this grade in several lands near the same period; whether, if its beginning is confined to one place, that place lies in Asia, Africa, Europe, or North America; whether the length of its past sojourn on the earth is limited to so brief a period as six thousand, or extended to so long a period as two hundred and forty thousand years; whether all languages descended from one original mother-tongue, or

were independent formations, — these are among the problems of the origin of the race which still await solution. For a solution, however, they may wait in vain. The evidence regarding the primitive condition of mankind is so slight as almost to forbid a verdict. Investigators are becoming more inclined to adopt the views of Sir Henry Maine in saying that “I have never myself imagined that any amount of evidence of law or usage, written or observed, would by itself solve the problems which cluster round the beginnings of human society.”*

‘One of the most important of these unsolved problems relates to the beginning of the family. Was the family the original unit of the social economy; or is it, as a distinguished ethnologist has remarked, the “product of a vast and varied experience”?† Was the primal condition of men and women communistic, whence has gradually arisen the modern family; or was that condition one in which separate and distinct pairs of human beings, of opposite sex, were recognized? Students of pre-historic times belong in general to one of the two classes suggested by these questions. They hold either that communism of the sexes was the archaic state, or that some sort of family first existed. In the support of each of these views is evidence.

In behalf of the opinion that the first men and women were in their sexual relations communists, it is to be said that certain tribes have within historic times been known to live in a state of promiscuity. Thus live at the present the Bushmen of South Africa; and their language contains no word distinguishing a mar-

* Early Law and Custom, 285.

† Morgan’s Ancient Society, 508.

ried woman from one unmarried. Speke affirms that no marriage exists in Uganda, and Livingstone says that none exists in Loanda. Marriage is also unknown, remarks Poole, among the inhabitants of the Queen Charlotte Islands. This evidence would be of great value, could we rely with a good degree of assurance upon the observations of travellers among savage tribes. Many forms of marriage, however, present to the casual observer evidence of promiscuity. The first missionaries to the Sandwich Islands were shocked at the domestic relations of the natives: these relations appeared to be the sum of all abominations. But continued and careful observation proved that the islanders were living very innocently and modestly for savages, in a state of "consanguine marriage," — a state far in advance of pure communism.

The fact, furthermore, so often affirmed, that among primitive races kinship is reckoned through females only, is believed to point backward to a communistic state. It is impossible that such a method of reckoning relationship would have arisen except at a time when the paternity of every child was uncertain. Archæologists are not, however, by any means agreed that this method was a universal practice. Morgan, in his elaborate treatise on "Systems of Consanguinity and Affinity in the Human Family," shows that relationship through males was recognized in apparently the most primitive system of kinship of which traces remain. It is not to be denied, however, that in early times the bond connecting mother and child must have been much stronger than the tie connecting the father with the child. The well known cases of marriage, named in the Old Testament, between brothers and sisters germain, as that of Abraham and Sarah; the deep

affection for a sister's children, which Tacitus says prevailed among the Germans, and which it is known has also prevailed among many other tribes, and to a degree often exceeding the affection between a parent and a child, may show that the maternal tie is much stronger than the paternal. This method of computing relationship through females only may, however, receive an explanation quite as plausible as is found in the assumption of the communistic basis of society. The bond joining the child to its mother is a natural bond. For months previous to birth, and for months succeeding birth, the relation between the two is of the most intimate character. For existence and sustenance the child depends upon the mother. The tie connecting the child and the father, however, is remote. It may well be supposed that a considerable advance in intelligence was made before men perceived that the relation of a father to a child was as essential as the relation of the mother. For this reason, therefore, kinship may have been reckoned exclusively through females.

{These and similar considerations in behalf of a primitive communistic state of the sexes possess sufficient value to convince scholars like Lewis H. Morgan, Sir John Lubbock, McLennan, and Bachofen.

{On the other hand, thinkers such as Sir Henry Maine, Herbert Spencer, Charles Darwin, and Oscar Peschel, are not convinced that mankind ever existed in a state of entire sexual communism. The instincts of animals furnish strong evidence in favor of the family as the original social type. Among only few wild animals does promiscuity prevail. A strict pairing is the rule among some monkeys, ruminants, ungulates, and predatory animals. Some Indian and American monkeys are monogamous, and live the whole year as

distinct pairs; others are polygamous, each family being separate. Moreover, the males of mammals are jealous of the possession of the females. Each male seems to desire to have his own companion, and to be averse to her surrender to a rival. It is also well known that promiscuity tends to infecundity. Especially is this the result when the practice is followed among those near of kin. The deplorable physical condition of the Hawaiians is doubtless in part due to their consanguine system of marriage.} This community of relationship may have rendered them peculiarly sensitive to certain vices, which are rapidly decimating their number. Upon this point, and upon the general subject, the words of Charles Darwin should be considered. "We may conclude," says Mr. Darwin, "from what we know of the jealousy of all male quadrupeds, that promiscuous intercourse in a state of nature is extremely improbable. . . . If we look far enough back in the stream of time, it is exceedingly improbable that primeval men and women lived promiscuously together. Judging from the social habits of man as he now exists, and from most savages being polygamists, the most probable view is that primeval men aboriginally lived in communities, each with as many wives as he could support and obtain, whom he would have jealously guarded against all other men. . . . In primeval times, men . . . would probably have lived as polygamists, or temporarily as monogamists. They would not at that period have lost one of the strongest of all instincts, common to all the lower animals, the love of their own offspring."*

It is, however, extremely difficult for a careful student of early society to believe that marriage, as we un-

* Descent of Man, II., 346, 351.

derstand it, as a union for life between one man and one woman, was the social rule in primitive times. Neither is it easy to believe that polygamy, the strict union of one man with several women, or that polyandry, the strict union of one woman with several men, was the primitive condition.) The nearly equal birth rate of the sexes would shut out the presumption of the universal prevalence of either of these customs. Were it possible to reconstruct the original social status, it would probably be found to contain elements of each of these diverse conditions and practices. If primitive society was not a social chaos, it may have embraced domestic relations of every sort. As either passion or expediency dictated, polygamy, polyandry, and even monogamy, may have prevailed side by side. "The original communities of men may have taken," says Sir Henry Maine, "all sorts of forms." * It is, indeed, not improbable, on even the grounds of historic credibility, that a family pure and simple may have existed since the beginning of the human race. Either mutual attraction, or a community of interests, or attachment to their common children, may have bound a man and a woman together, at least during the child-bearing period of the woman's life.

(But whatever may be the original form of society, it is evident that when in historical investigation we first meet a social type, the family is found to exist as the social unit; and it is to the family, as a historic institution, that we devote our attention.)

(The discussion of the family will be primarily limited to the two great branches of the human race, which have dominated the thought and civilization of the world. They are the Semitic and Aryan, or Indo-

* Early Law and Custom, 281.

European races. These branches are distinguished from each other, and from other divisions of mankind, by well defined differences in language, customs, politics, and religion. The Semitic group includes the Hebrews, Phœnicians, Syrians, Babylonians, and Arabs. The Aryan division embraces the Indian, Persian, Greek, Latin, Slavonic, Teuton, and Celtic races. If the world had a civilization more ancient than the Semitic or Aryan, it has left no trace of its existence on the page of history.

(The Semitic race had its early home, it is conjectured, in central and northern Arabia. It dwelt not in permanent towns and homes, but as nomadic tribes. This wandering mode of life, favorable neither to political union nor to social progress, induced the tribes to break away from their original dwelling-places, and to migrate, after the manner of Abraham and of Lot, towards the north, the south, and the west. Its civilization was a material civilization. Commerce had its beginnings with the travelling merchants of Arabia. From the earliest times down to the seventeenth century the luxuries of life came from the East. Neither art nor poetry, neither science nor philosophy, found its source in the Semitic races. They were marked by a mental narrowness, and by a general character hard and egotistic. Yet, of morality and religion they possessed a high ideal and a pure practice; for monotheism and the conception of a just and wise ruler of the universe, the world is to them indebted. Their social polity was characterized by the qualities of their mind. It was autocratic and tyrannical. Individual liberty was unknown and inconceivable. The Semitic nations have known no permanent medium between the anarchy of nomadic tribes and the hard

rule of the despot. The family was likewise founded upon the principle of authority and obedience. The husband was its law-maker and its governor. The wife and children were ~~his~~ slaves; their supreme duty was service and obedience to his commands. An interesting fact which sheds light upon the position of women is that in the Semitic language the names of utensils and of instruments which are for use are usually of the feminine gender.

The patriarchal family is a Semitic institution. The picture which the Bible presents of Jacob, with his numerous wives, his horde of servants, his immense flocks and herds, with himself as the sole ruler, is a type of the family as it existed in the Semitic race. Woman was regarded as an object of sale, purchase, and ownership. The practice of buying wives was almost universal. The marriage of Isaac and Rebecca appears to represent the normal form. The fathers of the bride and groom are the real contracting parties. Abraham sends his faithful servant to search for a wife for his son among his own kindred. He loads him with gifts for the chosen bride and her family. Bethuel, her father, receives the messenger, hears his story, and says, "Rebecca is before thee; take her, and go, and let her be thy master's son's wife." * Apparently, the consent of the woman is at the first neither sought nor expected. Her consent, which is obtained later, seems to be a formality. In that early period, polygamy appears to have been the rule, as it has indeed continued to be among certain descendants of the race. The race was then, as now, characterized by an intense family pride. Marriage within the tribe, and even with those of near kin, as half-brothers and sisters, was

* Gen., xxiv., 51.

the custom. Permission was also given to take wives from among the female captives. At the slaughter of the Midianites, Moses saves the virgins that they may be given as wives to the captors. The Benjamites, having killed the people of Jabesh-Gilead, appropriate their virgins as their own wives.

The husband and father in the Semitic family was a king and lord; and great was his pride in the increase of the number of his subjects. Marriage was quite the universal custom; and childlessness was looked down upon as pitiable and contemptible. Divorce was at the pleasure of the husband; and barrenness was, of course, a sufficient cause. Divorce was, however, less frequent than the introduction of a second wife into the family. Sarah giving to Abraham Hagar, and Rachel giving to Jacob Bilhah, are examples of the general custom. The treatment inflicted upon Hagar was no anomaly. Abraham was only exercising the common right of an absolute sovereign in thus dismissing an offending wife and child. Both were his own; and he could do with them as he saw fit. The Semitic lord of the family might remark of his wife as Petruccio says of Catherine:—

I will be master of what is mine own.
She is my goods, my chattels; she is my house,
My household stuff, my field, my barn,
My horse, my ox, my ass, my anything.

In respect to inheritance, neither wife nor daughter was the heir of the husband or father. At the father's death, the eldest son took his place as the head of the family. The story of Jacob and Esau illustrates the regard paid to the rights of the first-born son. Under the Mosaic dispensation, however, these rights were materially modified. The eldest son received only a

double portion ; and, in case of no sons, the daughters inherited. These heiresses were obliged to marry within their own tribe, to prevent the alienation of the inheritance.

If, in the history of the world, the Semitic race and the Aryan have ruled its thought and civilization, the Aryan has, indeed, been the more powerful factor. Representing, with a few slight exceptions, the nations dwelling between the Ganges and the Atlantic, as well as the people of the American Republic, the Aryan race is supreme in every department of modern life. Its early home was in the table-land of central Asia. At a remote period, in that region where the Oxus and the Jaxartes have their sources, and extending westward toward the shore of the Caspian Sea, dwelt our Aryan forefathers. The length of time that here they had lived admits only of conjecture. The date of their separation, when, breaking up, these original companies streamed forth, — some to the south, to the Indian Peninsula, and some to the north and west, to Europe, — is likewise unknown. But before their migration, they had formed certain customs, and adopted certain modes of speech, which, despite the great and diverse changes which they have since undergone, are to be recognized as the parent of present customs, and the origin of words now spoken. By means of the science of comparative philology, we are enabled to reconstruct, with a tolerable degree of accuracy, the social condition of this remote people.

It no longer admits of doubt that these original settlers were not savages. They did not live in a state of communism. However low they once may have been degraded, they certainly are, at a period as remote as historic criticism can penetrate, acquainted

with many of the methods and means of civilized existence. They know the arts of ploughing, of making roads, of tanning, of weaving, and of sewing. They build substantial houses, they eat cooked food, they drink fermented liquors. They reap their harvests with a sickle, thrash and winnow the grain, and carry it to mill in wagons with wheels. They count as far, at least, as a hundred, and Hearn declares, as far as a thousand.* They wear leather shoes. They are familiar with many useful plants, and with their properties. They know the use of the anvil and the hammer, of the bellows and the forge. They have domesticated the animals of most service to man—the cow, horse, sheep, goat, and dog.

They illustrate, moreover, the remark of Aristotle that the family is the unit of the social fabric. They live in families. The husband is the husband of one woman, and the wife the wife of a single man. Each family has its own house and garden. Property is in part, as the arable land, held in common, and in part held in individual ownership. In this pre-historic period, the family appears to hold a place of much greater relative importance than in modern times; for, as Sir Henry Maine acutely remarks, "all the relations of persons are summed up in the relations of family." From this condition we have moved into a "social order in which all these relations arise from the free agreement of individuals."† The family has a distinct and separate existence. It is, to apply to it a modern term, a corporation. It has a being apart from the individuals composing it. It possesses rights, and owes duties of its own. It never dies.

* The Aryan Household, 279.

† Ancient Law, 103.

The principle and purpose upon which the family is founded are the performance of the *sacra*. The *sacra* consist in large part of the offerings made to the dead. Ancestral worship is the central point in the family organization. If it be difficult for us to realize this conception, we may perhaps lessen the difficulty somewhat by recalling that not less than one half of the inhabitants of the globe are addicted to the custom of worshipping their dead ancestors. The spirit of the departed, according to the Aryan conception, hovers about the place in which its former body is buried. This place is either beneath the hearth-stone or near the door of the house. To him are offerings of food and of drink made. These offerings are not merely pledges of honor; they are a veritable part of his property in the household. Properly made, he is gratified; improperly made, he suffers the pangs of unceasing hunger. In the one case, he becomes the guardian of his sons; in the other, their enemy, pursuing his faithless descendants with a punishment which is none the less dreadful because definitely unknown. The traces of ancestral worship seen, with greater or less distinctness, among the Hindus, the Iranians, the Slavonians, the Greeks, and the Romans, are only the perpetuation or survival of the family religion of the original Aryan household. This type of religion, says Menu, even at the time at which his laws were written, is the oldest known to man. It appears in the earliest period; so firmly was it lodged in the human affections that Buddhism was compelled to recognize it; and it was the last of the old systems to give way before the triumphant progress of Christianity.

The first step in the formation of the family, whose chief duty is to perpetuate the ancestral worship, is

marriage. Marriage is not sought, however, as a good in itself, but as a necessary means to a good, which is the birth of a son. It is not to be supposed that so important a duty as the selection of the mother of a future son is left to blind chance. The field of choice is determined, remarks an accomplished student of Aryan institutions, by two fundamental rules, one positive and one negative: The bridegroom "must marry a daughter of his own people; he must not marry a woman of his own kin. The race, on the one side, and his own name on the other side, marked the limits of his selection. . . . This law involves two propositions: All marriages must take place within the people; no marriage must take place within the kin." *

But marriage is consummated not for its own sake, but for the sake of the birth of a son. Not every son, indeed, can receive and transmit the ancestral obligations. The son who is capable of these high offices must be born of a legitimate union. The illegitimate son is excluded from the family. "These animals," is the strong language of Menu, "begotten by adulterers, destroy, both in this world and in the next, the food presented to them by such as make oblations to the gods and to the manes." In neither Greek, Roman, nor German law, did the bastard receive recognition. On his birth, and after simple ceremonies, the legitimate son is admitted into the household. The father and husband receives him as his future successor. A woman, a daughter of the family, cannot perform the *sacra*. In ancient law, woman has no standing. She is a part of the household, but not a part of the state. Her husband is her judge, representative, and lord. The reason

* Hearn's *The Aryan Household*, 158.

that the female child was debarred from the performance of the *sacra*, it is impossible to determine with complete satisfaction. The reason may lie in the fact that she was looked upon only as a temporary member of the home, who, by means of marriage, would soon become the permanent member of the household of her future husband.

For, as has been already suggested, the wife and mother is adopted from another household than that of which she is a permanent member. By this adoption she ceases to be a member of the home into which she was born, and becomes a member of the home of her husband. She cannot at once be a member of two households; she cannot worship at two hearth-stones; she cannot at the same time form a part of two corporations. Before marriage, she is under the power of her father; after marriage, under the power of her husband. If her husband dies, she may come under the power of her own son, who succeeds her husband and his father in the headship of the family. Her marriage, dissolving the relation she holds to her family, prevents her from sharing in the inheritance of the family of which she was formerly a member. Her duties in the home to which she is transferred are simple. The first duty, apparently, is to give birth to a son. She attends to all domestic arrangements, and to the training of the children, especially of the daughters.

Chosen for a religious purpose, the wife cannot be put away without cause. So far as divorce is recognized in the earliest law with which we are acquainted, it is justifiable only on the ground of either barrenness, or of misconduct of exceeding grossness. Sterility furnishes, indeed, sufficient cause for separation. The

wife has been selected as wife for the express purpose of bearing children. Failing of this purpose, she has so far failed as to allow a divorce. In the laws of Menu, it is provided that in the eighth year of marriage, the barren wife may be put away. If the husband dies leaving no children, his brother, or his next of kin, succeeds him, not only in the duty of observing the ancestral rites, but also in the headship of the household. The brother may thus be obliged to abandon his own wife, and become the husband of the widow, for the sake of begetting a son. In case other means fail, it is possible to adopt a son, who, after introduction into the family, stands, in all respects, as a veritable son and successor.

In these two great races, then, the Semitic and the Aryan, we find at an early period the family as the type of the social structure. But the Semitic family and the Aryan are founded upon different principles, and pursue different methods.

The Semitic family is patriarchal, the Aryan is individual; one makes the father the unit, the other makes the family itself the unit; one is polygamous, in the other monogamy prevails; one gives all duties to women, the other gives some duties to men and some rights to women. The patriarchal Semitic system is the germ of the monarchy; the Aryan family is the beginning of the political commonwealth.

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THE FAMILY AMONG THE GREEKS, ROMANS, AND JEWS.

The family in Greece and Rome a religious institution. — The family in the Homeric poems. — The family in the classic period of Greece. — Marriage a religious ceremony; its three elements. — Plato's high estimate of women, and communistic theories. — The family in Sparta. — The family in Rome; its position higher than in Greece. — Three forms of marriage. — Rights and duties of husband and wife. — Conditions of divorce. — In early period, divorce infrequent; in the later, frequent. — Degradation of domestic life in later period. — Restoration at hand.

THE family, as it appears in early Greece and Rome, bears many of the characteristics of its pre-historic period. It is still a religious institution. Neither the principle of physical generation nor of natural affection, nor even of superior strength, forms its foundation. Its fundamental principle is the duty of the worship of the dead ancestors. Its members are united in the observance of the religious ceremonies of one hearth-stone. The dead as well as the living are its members.

The religious character of the family, however, is not made so prominent in the period of Homer as at a later time. The intercourse between husband and wife, as it is pictured in the *Iliad* and *Odyssey*, is marked by simplicity, naturalness, tenderness, dignity, and substantial delicacy. In all the lines of these poems occurs no instance of rude manners of a woman; and there is only one instance — if the case of Helen herself be

excluded—in which a wife breaks her marriage vow. It is the case of Anteia, the wife of Proitos; but her family was Phœnician. The intensity of conjugal love has never exceeded the affection of Penelope and Ulysses. No trace of polygamy appears. Concubinage is practised by a few, and apparently by a few only, of the Greek chieftains who besiege Troy, but of actual domestic concubinage Homer furnishes no evidence. The essence of marriage seems to lie in co-habitation, with a solemn public acknowledgment of the two persons as husband and wife. A simple ceremonial may be performed in acknowledgment of the relation. Even when the wife is removed from her home by force, her return restores her to her place as wife. Death alone appears to be the final dissolution of the conjugal bond. The relations, moreover, of youth and maid are suggested with much delicacy; and those of the unmarried woman to her suitor are portrayed with great purity.* The address of Nausicaa to Ulysses is a model of intelligent self-respect. The employments of the women of the Homeric family are almost ex-

* “It may be fearlessly asserted that the types of female excellence which are contained in the Greek poems, while they are among the earliest, are also among the most perfect in the literature of mankind. The conjugal tenderness of Hector and Andromache; the unwearied fidelity of Penelope, awaiting, through the long revolving years, the return of her storm-tossed husband, who looked forward to her as to the crown of all his labors; the heroic love of Alcestis, voluntarily dying that her husband might live; the filial piety of Antigone; the majestic grandeur of the death of Polyxena; the more subdued and saintly resignation of Ephigenia, excusing with her last breath the father who had condemned her; the joyous, modest, and loving Nausicaa, whose figure shines like a perfect idyl among the tragedies of the *Odyssey*,—all these are pictures of perennial beauty, which Rome and Christendom, chivalry and modern civilization, have neither eclipsed nor transcended.” — Lecky’s *History of European Morals*, Am. ed., II., 279.

clusively domestic. They include the indoor work, and also the bringing of water and the grinding of flour. Telemachus bids his mother mind her spindle and loom, and not interfere in the debates of men.

The family of the classical period of Greece was less pure but more religious than the Homeric family. Concubinage and intercourse with the *hetairai* were not only allowed, but even favored by the State; yet these relations do not seem to have interfered with the domestic relations.* Religious motives formed the corner-stone of the family. The performance of the proper ceremonies to the spirits of the dead constituted the chief purpose of its existence. By law and by custom was this idea favored. In its perpetuation marriage was an essential instrument. In the contracting of marriage, equality of birth and of wealth were the chief considerations. The comparative seclusion of the wife made personal charms of slight consequence. In betrothal, the consent of the parents of the woman was more necessary than her own. By them she might be obliged to accept a stranger for her husband. Sophocles† makes a woman describe the lot of her sex by saying, "When we are grown up, we are driven away from our parents and paternal gods"; and Euripides‡ causes Hermione to declare it is her father's business to provide a husband for her. At the betrothal, the dowry of the bride was settled. The choice of an Athenian citizen was limited to Athenian women. Only when thus married, could his children possess the full birth-rights of citizens. An Athenian woman was likewise not allowed to marry a foreigner. The penalties for seeking a spouse beyond the national boundaries were

* Guhl and Kohnen, *Life of the Greeks and Romans*, 185.

† Frag. Terens.

‡ *Androm.*, 920-953.

severe. But, although direct lineal descent was, proximity by blood was not a bar to marriage.

In the seclusion of her home, the Grecian maiden grew up in comparative ignorance of the world. She had no intellectual companionship with men. She was concerned with her spinning, weaving, painting, and the making of her clothing. Even after marriage, she had no share in the intellectual life of her husband. Her position and influence were hardly higher than those of a faithful domestic slave. The opinion prevailed that woman was inferior to man. Aristotle* ventures to declare that the intellectual ability of women differs not simply in degree, but even in kind, from the ability of men, and believes that women will never attain to a place higher than that of inferior and subject members of the household. "Is there a human being," Socrates asks of one of his friends, "with whom you talk less than with your wife?"† And Demosthenes frankly declares, "We have *hetairai* for our pleasure, wives to bear us children, and to care for our households."‡

In the goddesses Athene and Artemis, and in the heroines Andromache and Antigone, Greek women had noble ideals of womanly excellence; but these ideals were never realized in practical life. Neither in political nor military affairs did they share. In literature, also, at least in the later ages, they failed to win renown. As mothers and housekeepers alone did they succeed in making their influence felt. The common sentiment is suggested in the historian's remark, "Hers is the greatest glory who has the least renown among men."

* Politics, Book IX., ch. I.

† Xenophon, Economics, II., 12.

‡ *Karà Neutras*

The position of Aspasia was exceptional. The *hetairai*, restrained neither by law nor by custom from association with men, were in intellectual gifts superior to respectable women who lived a secluded life. The lower class of these unfortunates, in Athens, as elsewhere, passed a wretched existence.

Designed for the perpetuation of a religious institution, the marriage was solemnized by a religious ceremony. A domestic rather than a public ceremony, it was performed in the home rather than at the altar of the temple. Among the early Greeks and Romans the ceremony* consisted of three parts. In the first part, the father of the bride offers a sacrifice at his own hearth-stone, declaring that he absolves his daughter from all allegiance to her home. In the second part, the bride, veiled and crowned, robed in white, preceded by the bearer of the nuptial torch, and accompanied by a chorus chanting religious hymns, is conducted on a car to the home of her husband. Arrived at the door, the husband seems to seize her by violence,† and, after an apparent struggle, bears her into his dwelling. In the concluding and most important part of the ceremony, the two together approach the hearth. The bride is sprinkled with water. Her hand touches the holy fire. Prayers are offered. A cake is shared by them. Thus she stands for the first time in the presence of the divinity of her husband's home. By these rites the husband and the wife are brought into religious communion with each other and with the household gods.

* The Greek and Roman writers usually apply to marriage a religious term — *θεῖον γάμον* and *sacrum nuptiale* are common.

† Certain scholars regard this fiction as a relic of the custom of capturing wives.

Her duties as wife are described by Plato* as three-fold. She is the housekeeper, attending to the ordinary concerns of cooking, weaving, and the superintendence of the servants. It is also her special work to care for the sick inmates of her home, even if they be the slaves. She is furthermore the director of the physical education of her children, a feature of education on which the Athenian State laid great emphasis. The consideration which her husband entertained for her, though differing according to various circumstances, was not generally great. She was rather his helpmate than companion — rather the mother of his children than his wife. Obedience was on the one side regarded as a right to be exacted, and on the other as a duty to be willingly and joyously paid.

Fidelity on the part of the wife was demanded; laxity on the part of the husband was allowed. Adultery on the part of the wife resulted in divorce. If, after her crime, the Athenian citizen continued to live with her as his wife, he thereby lost his rights of citizenship. Separation might be effected by the wife leaving her husband, or by the husband dismissing his wife. In this as in other concerns, if the wife judged her husband had ill-treated her, she might bring an action against him. The adulteress taken in the act the injured husband had the right to kill. But separation, however originating, was a reproach rather to the wife than to the man. To the Greek, the family was an institution founded more on custom than on law, which bound its members together with a tie less strong than that of friendship, and far less sacred than that of country. The patriotic feeling of both the Greek and

* Whole discussion in Laws, VI., VII.

the Roman has in modern times been supplanted by the family affection.

The place which Plato assigns to women in his imaginary commonwealth is very unlike the place they occupied in Athenian society. To the girl he would give the same education in music and gymnastic as to the boy. He would also teach her the art of war. The sexual differences do not necessitate, he argues, a difference of nature or of duty. "All the pursuits of men are the pursuits of women also." * The natural differences which now appear to divide the sexes, — larger feelings and sensibilities on the one side, and larger intellectual and administrative capacities on the other, — may not be ultimate differences, but the result of education. These differences may disappear in a different state of society, and under different circumstances of life. The sexual distinction in the case of animals does not produce marked distinction in their nature and ordinary functions. Therefore Plato, giving to woman the same training which her husband received, would elevate her to the rank of his equal and companion.

But, although this conception of Plato is in accordance with the advancing sentiments of a Christian civilization, his method of dealing with the family in certain important relations is nothing less than abhorrent to modern instincts and ideas. The philosopher believes it is both desirable and possible that, under certain restrictions, men and women should live in a state of sexual communism. It is to be noted that this state for which Plato pleads is the reverse of licentiousness. The rules regulative of it are of great strictness. No indulgence is allowed the passions.

* Republic, Book V.

“In a city of the blessed, licentiousness is an unholy thing which the rulers will forbid.”* “Our plan will be to make marriage as holy as possible ; and the most beneficial marriages will be the most holy.”† As great care should be exercised in the breeding of the human as of the brute species. If persons of inferior nature become parents, the State should put an end to the existence of the offspring. The State should use its best endeavors that those of superior nature become parents, and only those who are thus gifted. The parents should be in the prime of life. The age of twenty-five and that of fifty-five on the part of the man, and of twenty and of forty on the part of the woman, indicate the limits within which the responsibilities of parenthood may be assumed. “Any one above or below those ages who takes part in the public hymeneals shall be said to have done an unholy and unrighteous thing; he is the father of a child who, if he steals into life, will have been conceived under other auspices than those of sacrifice and prayers, which, at each hymeneal, priestess and priests, and the whole city, will offer, that the new generation may be better and more useful than their good and useful parents.”‡ At his birth, the State shall assume the care of each child; and precautions shall be taken that neither father nor mother shall recognize their offspring.

Horried as the modern mind is at these philosophic and apparently impracticable vagaries, we should bear in mind that the purpose of Plato was simply to effect a physical, intellectual, and moral improvement in the race. His purpose was assuredly the highest. But we are inclined to believe that, even could it be realized,

* Republic, Book V.

† *Ibid.*‡ *Ibid.*

the result would not compensate for the loss of many of the best things in life, which it would necessitate. The regard which modern society and the home has for the base, the idiotic, the insane, and other unfortunates, is one of the noblest achievements of Christianity. From the absolute destruction of the deformed infant we shrink with the force of all our instincts. Yet, it is to be confessed that we have hitherto found no satisfactory solution for one of the most serious and difficult of social problems; and the attempt at its solution, made by perhaps the most philosophic mind of history, must ever rank as among the greatest creations of human thought.

The family of Sparta was more like the family of the Homeric age than like the Athenian family of the classical period. The wife was honored with the title of mistress. So great was the influence of the Lacedæmonian women that the Spartan husband was charged with submitting to the rule of his wife. So great was the dower which the wife received that in the time of Aristotle about two fifths of the territory of Sparta had thus come into the possession of women.* They also associated with their husbands on terms of comparative equality; and their morals were purer than those of their Athenian sisters.

At Rome the family occupied a more central position in social and political life than in Greece. Religion, as its foundation, was more strongly emphasized; and its morals remained purer to a much later period. In early times at Rome, Alcibiades would have had no following; nor could either Phryne or Aspasia have succeeded in playing her part. Religion formed its fundamental principle; and marriage was a religious

* Aristotle, *Politics*, II., 6, § 10.

ceremony designed to perpetuate certain important religious observances.

According to ancient Roman usage, there were three forms by which marriage might be contracted. One, and the most important form, was religious; two were of a civil character. The essence of a marriage, in whatever form celebrated, consisted in the consent of the parties to it. The lower form of the civil contract, called *usus*, was effected by a man and woman living together as husband and wife for one year. The law of the Twelve Tables provided that, in case a woman did not wish to become a wife in this manner, it was only necessary for her to absent herself for three successive nights in the course of the year. The higher form of civil marriage, known as *coemptio*, was the delivery of a woman to a man as his wife, in the presence of witnesses. Its obligations were found in the contract which united the contracting parties. These two forms became more common toward the time of the Empire. In the early period the religious marriage, *confarreatio*, was probably the customary ceremony. It consists of three parts. By solemn rites the father of the bride declares that her relation to his home has ceased. She is conducted to the home of her husband. She is at this home led to the hearth, where stand the domestic gods about the sacred fire. A prayer is offered, a sacrifice made, a cake of flour eaten. Thus and henceforth they participate in the same worship; they share in the same rites, prayers, and festivals. Thus they are constituted husband and wife.

In addition to these stricter forms of marriage, there was in use one which was much less binding upon the wife. According to its terms, the husband and the wife

stood upon an equality in reference to each other. She still remained within the power of her own family, and possessed her rights to her property. Marriage of this sort was rendered the more binding by continuing for a year. It became the more common as the inconveniences of the three stricter forms increased. With the exception of the religious ceremony, — mainly used by the priests, — it was, under the middle emperors, the only form.

If the family is the centre of the early Roman republic, the husband and father is the centre of the family. He is the priest of the domestic altar, the chief minister of the domestic religion. Neither the city nor its pontiffs can effect any change in the forms of the worship of the family. He is responsible for the perpetuity of the family, as well as for its worship. He has the right, in case she fails to bear him a child, to divorce his wife. He has the right to accept or to reject the child at its birth. He has the right to join his daughter in marriage, and to compel the wedlock of his son. He has the right to exclude the son from the family and to introduce a stranger to the domestic hearth. He is the judicial authority in the household. "The husband," remarks the elder Cato, "is the judge of his wife; his power has no limit; he can do what he wishes. If she has committed a fault, he punishes her; if she has drunk wine, he condemns her; if she has been guilty of adultery, he kills her." Over the children, likewise, his control was no less absolute. The student of later Roman history recalls the father who put his son to death because of his share in the conspiracy of Catiline. Valerius Maximus states that Atilius killed his daughter, who was guilty of in chastity.*

* De Coulanges, Ancient City, 122.

The position of the wife in the Roman household was the correlative of that of her lord. If his was the right to command, hers was the duty to obey. In the laws of Menu it is said: "Woman during her infancy depends upon her father; during her youth, upon her husband; when her husband is dead, upon her sons; if she has no son, on the nearest relative of her husband: for a woman ought never to govern herself according to her own will."* Of this nature are the laws of Rome, as well as of India and Greece. The Roman wife is in the complete control of her husband. She may be obliged, on his death, to accept the guardian whom he may appoint, and even to marry, as her second husband, one whom he may designate. Her children are not within her control. For the marriage of her only daughter, her consent need not be asked. Even in case of divorce, the children remain with their father. Such submission, however, resulted only from the religious marriage; it was not involved in the civil contract. United to her husband by the bonds of *usus* or of *coemptio*, she was not obliged to recognize these rights of her husband, which he possessed only by reason of his position as the priest of the family altar. In this case, she was a person rather than a thing.

But though, while living under the religious marriage, the Roman matron lacked authority, she did not lack dignity. She was addressed as the *mater familias*, as was her husband the *pater familias*. She pronounced to her husband, on her entrance into the household of which marriage opened the door, the formula, *Ubi tu Caius, ego Caia*, implying that in dignity she was his equal. She was the object of veneration. She had her place near the sacred fire. It was her duty to see that

* Laws of Menu, V., 147, 148.

its flame did not grow dim. So necessary was her presence that on her death her husband lost his office of priest.

Despite, however, this diversity of the condition of the husband and the wife, it is not to be doubted that a marriage was usually a happy as well as a permanent union. Cato thought it better "to be a good husband than a great senator."* It is said that it was more than five hundred years after the foundation of the city that the first divorce occurred. This divorce was the repudiation by Carvilius Ruga of his wife, B.C. 234, on the ground of her barrenness. "He loved her tenderly," says Aulus Gellius, "and had no reason to complain of her conduct; but he sacrificed his love to the sanctity of his oath, because he had sworn, in the formula of marriage, that he took her to wife in order to have children."† The conduct of Ruga was, however, generally condemned; and it would seem that the right of the husband to divorce a wife on this ground was not often, if at all, in the early period, exercised. But in the later period of the Republic, and under the Empire, divorces became very common. After the Punic wars, a decay of manners set in, and the marriage ties became loosened. Pompey divorced his wife Mucia on the charge of adultery.‡ Paula Valeria is described by Cicero as waiting for the return of her husband from his province in order to serve a notice of divorce upon him.§ Sylla, Cæsar, Antony, and Augustus repudiated their wives. It is notorious that so upright a man as Cicero divorced his wife of thirty years because of a dispute in relation to certain pecuniary transactions. He married his ward, a young and wealthy woman; but

* Mommsen, *History*, Vol. II., 405. † Aul. Gel., IV., 3; XVII., 21.

‡ Cicero, *Ep. ad Att.*, I., 12.

§ Cicero, *Ep. ad Fam.*, VIII., 7.

this alliance also was speedily dissolved. Plutarch* affirms that originally the husband only had the power to effect a divorce. Although the truth of this statement cannot be verified, it is yet not open to doubt that in Cicero's time wives were able to secure divorces.

The ceremony of divorce differed according to the ceremony of the marriage by which the husband and wife were united. If that ceremony was the lower form of the civil marriage, which consisted substantially in the two persons living together as husband and wife, the cessation of this mode of life was sufficient of itself to effect a divorce. If that ceremony was the higher form of civil marriage, the declaration, in the presence of witnesses, by both the husband and the wife, that the conjugal relation was at an end, seems to have been sufficient to create a legal separation. If the ceremony employed constituted the religious marriage, its dissolution was secured only by methods more elaborate. Originally, it is said that a marriage thus solemnized was indissoluble; but at least in the later period it could be revoked. "The husband and wife who wished to separate appeared for the last time before the common hearth. A priest and witnesses were present. As on the day of marriage, a cake of wheaten flour was presented to the husband and wife; but, instead of sharing it between them, they rejected it. Then, instead of prayers, they pronounced formulas of a strange, severe, spiteful, frightful character, a sort of malediction, by which the wife renounced the worship and gods of the husband. From that moment the religious bond was broken. The community of worship having ceased, every other common interest ceased to exist, and the

* Romulus, p. 23, Am. ed., Clough's Trans.

marriage was dissolved.”* But, in any case, no judicial decree, no interference of any public authority, was necessary for the validity of a divorce. Marriage being essentially a concern of the parties contracting it, or, at most, of the family, it could be dissolved by the consent of the husband and wife. But public opinion of the early period was strongly adverse to their separation. Marriage was usually dissolved only by death.

The woman who was separated from her husband had the right, like the widow after the time of mourning, of contracting a new marriage. In the early days, however, when marriage had a higher sanction, a second alliance usually subjected her to prejudice. The woman of “many nuptials” received no respect. Indeed, the widow remarrying was forbidden certain civil or religious privileges.

It is thus made evident that the grounds of divorce were various, extending from trivial causes, which were sufficient to dissolve the looser forms of marriage, to the most heinous faults, as adultery and barrenness, which were sufficient to sunder the religious bond. Although no express authority can be cited, it is possible that in case the religious marriage failed to be fruitful, the husband might even be under the obligation of repudiating his wife, and of introducing another into his home, in order that children might be begotten who should perpetuate the family worship. As under the Empire divorces became common, attempts were made to restrict the increasing laxity by affixing pecuniary penalties on the party whose conduct made the divorce necessary; but it is easy to believe the evidence that these penalties, like the penalties for celibacy, were of

* De Coulanges, *Ancient City*, 60.

slight force. With Greek culture, Greek frivolity and Greek morals entered Rome, and their influence resulted in the overthrow of the republican simplicity, and in the disintegration of the pure and strong life of the Roman family.

For, in the earlier periods conjugal fidelity was the apparent rule on the part of both husband and wife. The disintegration of morals following the Punic wars and the influx of the Greek methods of life contributed to make infidelity popular. "Men and women outdid each other in wanton indulgences." * The world was indeed conquered, and its treasures were enjoyed. "There are women," says Seneca, "who count their years not by the number of Consuls, but by the number of their husbands." He ventures to affirm that marriage is contracted merely for the sake of giving a new and piquant charm to adultery; † and that "whoever has no love affairs is despised." "Friends exchanged wives, and it was not considered in the least dishonorable to employ the name of friendship for the purpose of seducing a friend's wife." ‡

These and other excesses too horrible to be contemplated indicate the contempt into which marriage had fallen in the first century of our era. Childlessness was preferred to parenthood, and celibacy to marriage. In the earliest period, voluntary celibacy was regarded as worthy of censure. Laws were passed against it. The censors urged the people not only to marry, but also to become parents. In the later period, celibacy became so popular that the State interfered to prohibit its continuance. The taste for marriage was lost.

* Sen., Ep., 95; Becker's Gallus, 155.

† Sen., De Benef., iii., 16, 2, 3.

‡ Uhlhorn. Conflict of Christianity and Heathenism, 101.

The demands which women of rank made upon their husbands were heavy. If they brought a large dowry, the position of their spouses was not usually agreeable to those who boasted of their Roman citizenship. Against learned women was felt a special prejudice.* The rewards which Cæsar offered to encourage marriage, and the decrees of Augustus against those who remained unmarried and childless within certain ages, were of small avail. The emperors themselves contributed to their defeat. The riot of pleasure, extending from the accession of Augustus to the close of the second century, resulted in the overthrow of the Roman family of the Republic.† But with its destruction appeared a force, hitherto unknown, which was to restore it to its primitive and worthy position.

The Jewish conception of the family, marriage, and woman was based upon an idea totally different from

* Mart., ii., 90; Juv., II., vi., 448.

† "There can be no question that the moral tone of the [female] sex was extremely low—lower, probably, than in France under the Regency, or in England under the Restoration—and it is also certain that frightful excesses of unnatural passion, of which the most corrupt of modern courts present no parallel, were perpetrated with but little concealment on the Palatine. Yet there is probably no period in which examples of conjugal heroism and fidelity appear more frequently than in this very age, in which marriage was most free, and in which corruption was so general. Much simplicity of manners continued to co-exist with the excesses of an almost unbridled luxury. Augustus, we are told, used to make his daughters and granddaughters weave and spin, and his wife and sister made most of the clothes he wore. The skill of wives in domestic economy, and especially in spinning, was frequently noticed in their epitaphs. Intellectual culture was much diffused among them, and we meet with several noble specimens in the sex, of large and accomplished minds united with all the gracefulness of intense womanhood, and all the fidelity of the truest love. Such were Cornelia, the brilliant and devoted wife of Pompey; Marcia, the friend, and Helvia, the mother, of Seneca. The northern Italian cities had in a great degree escaped the contamina-

that of either the Greek or the Roman. The religion of the Jews was monotheistic, their social and political polity theocratic. As Jehovah was the centre and governor of the universe, so the man was the centre and governor of the family. Religion was not domestic but national, and the man, the father, paid his vows and offered his sacrifices alone. In the Jewish religion, women had no duties assigned them for their share in worship; they could offer no sacrifice in their own person, and their presence in the temple was restricted to a special outer court. The family pride of the Jew was, doubtless, stronger than that of the Greek or Roman, but it was a pride in his possible descendants as well as in his ancestry. The expectation of the Messiah made marriage and children as desirable as the law made them obligatory. Marriage was the rule, childlessness a disgrace, and barrenness a sufficient cause for divorce. The sexual purity of the Jews was probably greater than that

tion of the times, and Padua and Brescia were especially noted for the virtue of their women. In an age of extravagant sensuality, a noble lady, named Mallonia, plunged her dagger in her heart rather than yield to the embraces of Tiberius. To the period when the legal bond of marriage was most relaxed must be assigned most of those noble examples of the constancy of Roman wives, which have been for so many generations household tales among mankind. Who has not read with emotion of the tenderness and heroism of Porcia, claiming her right to share in the trouble which clouded her husband's brow? . . . Paulina, the wife of Seneca, opened her own veins in order to accompany her husband to the grave. . . . When Paetus was condemned to die by his own hand, those who knew the love which his wife Arria bore him, and the heroic fervor of her character, predicted that she would not long survive him. . . . All attempts to restrain her were abandoned, and her death was probably the most majestic in antiquity. Paetus for a moment hesitated to strike the fatal blow; but his wife, taking the dagger, plunged it deeply into her own breast, and then, drawing it out, gave it, all reeking as it was, to her husband, exclaiming, with her dying breath, 'My Paetus, it does not pain.'—Lecky's *History of European Morals*, ii., 308-310.

of any other civilized nation of antiquity. Polygamy, although existing among them for many years, and a natural outgrowth of the patriarchal social polity, was yet opposed to the spirit of their religion. In the Mosaic account of the creation, the fundamental principle of monogamy is stated in as strong terms as in the Gospel, and it would be difficult to account for the absence of any prohibition of polygamy in the Law were it not for the degraded state of the people when the Law was given. Polygamy, however, gradually ceased, and was probably little practised after the Captivity. Laws regarding adultery were strict. Adultery with an actual or espoused wife was punished with the death by stoning of both the guilty parties, at the pleasure of the husband.* This punishment was, however, seldom inflicted. Prostitution was interdicted to the Israelitish woman under severe penalties, and male prostitution was denounced. Priests were forbidden to receive the wages of sin, *i.e.*, a sacrifice offered by wantons to sanctify their business. Marriage with a prostitute was contrary to law, and the sons of such a woman were denied the political and religious privileges of citizenship unto the tenth generation.†

Divorce was permitted to the husband, but not to the wife, and both parties to the divorce were permitted to remarry. The grounds for separation were contained in the expression "something shameful" which the husband found in the wife. Practically, the wife was in the power of the husband, and could be divorced at will. The scandal of divorce, however, never reached the shameless point in Jewish history which characterized Roman life in the time of the emperors.

The regard paid to woman, however, was not high.

* Deut., xxii., 22.

† Deut., xxiii., 2.

While she enjoyed more liberty than the Greek wife, she never received the respect paid the Roman matron, nor the equality in the marriage relation which belonged to the German wife. Her work was domestic, the preparation of food and clothing, and she was never called upon to share the harder labor of the field. She was excluded from the society of men, yet not veiled in public as the women of kindred nations. Women joined in the public festivals by singing and dancing, and in notable instances, as Deborah and Huldah, were called to public positions. Yet in the eye of the law a woman had no existence. In her father's house she occupied the position of a servant; her father could dispose of her in marriage, and usually received a price in return. She inherited nothing if she had brothers, and as a widow was dependent on her sons. The Jewish ideal of womanhood, moreover, was low. Neither Jewish history nor poetry is often lighted up by such lofty conceptions of womanly excellence as Penelope, Polyxena, Iphigenia, Portia, or Arria (wife of Paetus). When Job was robbed of all his possessions, his wife was left, not as the consoler of his woes, but to add another sting to misfortune. We find no picture of such tender domestic relationship as that of Hector and Andromache. Women played a part in Jewish history, but usually an ignoble part. They made themselves felt in intrigues, in deceptions, and implacable hates. From Jael, who, under the guise of hospitality, slew her guest, down through Jezebel and Athaliah, the influence of women in public affairs was unfortunate. They showed no lack of courage nor of ability, but they manifested a special lack of moral principle. The idea that woman was an inferior order of creation to man, seems borne out by the public career of the sex. The Jew believed

that woman was responsible for the Fall, and the origin of human ills. That the period of purification after the birth of a female child was twice as long as after the birth of a male, is a fact full of significance.

The ideal of a virtuous woman as portrayed by King Lemuel in the last chapter of Proverbs was probably never realized. It is doubtful if the Jewish wife ever bought a field in her own right. She could hold no property. It is doubtful if she ever carried on mercantile operations even to the extent of making fine linen and selling it. Neither was she permitted to receive the fruit of her hands.

CHAPTER III.

THE FAMILY IN THE FIRST CHRISTIAN CENTURIES.

Christianity originated the idea that marriage is a life-long union of one man and one woman. — Christ's view of marriage and divorce. — Christ's high estimate of woman. — Paul's opinion as to marriage and divorce. — Opinions of the Church Fathers ; great attention paid to family ; reason, the prevalence of gross vice and overthrow of domestic institutions in the society into which Christianity came. — Influence of the Christian conception of marriage and the family. — Marriage a religious ceremony. — Influence of Christianity on position of women at once elevating and narrowing. — Influence of Christian principles on Roman law.

FOR the idea that marriage is a life-long union of one man and one woman, that outside of this union any sexual relation between a man and a woman is sinful, the world is indebted to Christianity. The Hebrews tolerated polygamy. The Greeks recognized and honored the position of the *hetairai*. The Romans, in their proudest supremacy, dissolved marriage at the wish of either of its contracting parties. The Germans, with their chastity and custom of severe punishment of the adulterers, allowed their princes the dignity of several wives. Christ, in his Sermon on the Mount, suggests that marriage is a state to be ended only by death or by fornication. He also gives the commandment that "what, therefore, God hath joined together, let not man put asunder." * Usually content with the laying down of principles, giving no specific clew for the solution of

* Matt., xix., 6.

many of the problems of modern society,—as the dissolution of human slavery, the legal position of women, the community of property,—he yet lays down a definite rule in respect to the institution of marriage. This is the only institution of society in reference to which he makes so specific a statement. It would not be unreasonable, then, to infer that this fact proves both the exceptional importance of the institution, and the power of the perils which menace it.

Without entering upon a critical examination of the precise nature of the cause which Christ allows to be sufficient to dissolve marriage, it is plain that only fornication or its moral equivalent is sufficient in his judgment to effect a dissolution. This sin was chargeable to the husband as well as to the wife. Chastity rested with equal obligations upon each. In case of separation, even for a just reason, neither was authorized to contract a new marriage. The innocent suffered with the guilty. The guilt even extended so far as to render both the partners in a second marriage, one of whom had been previously divorced, guilty of adultery. This interpretation is the view entertained by the Roman Catholic Church. It is not, however, necessitated by the record. But even if the teachings of Christ allow the one who is innocent to form a new alliance, they are still sufficient witness of the power of the restrictions which are set to guard the institution of marriage; restrictions more severe and absolute than the world had known.

These principles and rules are in accordance with the high place assigned women in the moral and social system of the New Testament. (Islamism looks upon woman as by nature unclean and base. Christianity regards her as the equal in dignity of man. The rela-

tions of Christ to women indicate the high respect which he entertained for them) If, in a peculiar sense, he was the child of God, he was also the son of a virgin. He was nurtured in the family. He was obedient to his mother as well as to his father. He numbered many women among his disciples. One of the more sublime of his sermons was preached to a Samaritan woman. The house of Mary, Martha, and Lazarus, at Bethany, appears to have been one of his homes. To the woman arrested in the act of adultery, repentant, he spoke words, not of scorn, but of forgiveness and hope. Women were among the last to leave his cross, and they were the first to visit his sepulchre. (In every respect, upon every occasion, he appears to treat them with the same consideration with which he treats men)

The legislation of the ancient nations, not excepting even the Hebrew people, relative to the family and to women, has for its chief end the perpetuation of the family. (The principal duty of women is that of motherhood. Such a conception tends to destroy the conjugal union. Its effect upon women is either slavery or degradation. Christ did not confine the family to such a purpose and method. Taking the woman from her family and the man from his, he ordained a new family. He transformed the paternal authority into affection and devotion. He gave power to the mother as well as to the father. He broke down the despotic rule. He proclaimed the equality of both the members. He joined them together in mutual duties and rights. He attached the union to a celestial origin)

In the writings of Paul, a lower view of woman and of marriage seems in places to be held. In various epistles he puts her into a subordinate position. "But I would have you know that the head of every man is

Christ; and the head of the woman is the man; and the head of Christ is God." * "For the husband is the head of the wife, even as Christ is the head of the church." † Paul commands her to keep silent in the church, and, if she desire to ask questions in a religious meeting, to learn of her husband at home. He commands wives to be subject "to their own husbands in everything," even as "the church is subject unto Christ." ‡ "Wives, submit yourselves unto your own husbands as unto the Lord." § But he also commands husbands to love their wives "even as Christ also loved the church, and gave himself for it." || (The apostle also seems to place marriage on a low basis.) In his first letter to the Corinthians, ¶ he allows marriage as a means of preventing fornication. The celibate life, however, is to be preferred to the married. At best, marriage seems to be a necessary evil; an evil designed to prevent greater evils. Such is the apparent teaching of this famous chapter. (But this depreciation of marriage is relieved when we consider the basis upon which this teaching is founded.) This basis is the near approach of the Parousia. Paul holds that for "the immediate practical relations of the brief, momentous present," ** freedom from marriage is to be preferred. He does not, he makes no pretence to, discuss the theme in its wider and more general relations. The general views of the apostle are suggested in other places. The married state he compares to the most holy and the most important relation of the church to Christ. †† He even goes so far as to write of a man being married, or joined, to Christ. ‡‡

* 1 Cor., xi., 3.

§ Eph., v., 22,

** Meyer on 1 Cor., 195.

† Eph., v., 23.

|| Eph., v., 25.

†† Eph., v., 23-23.

† Eph., v., 24,

¶ 1 Cor., vii., 2.

‡‡ Rom., vii., 4.

The metaphor is not confined to Paul. The writer of Revelation, prophesying the triumph of the divine kingdom, describes it as "the marriage of the Lamb"; and upon those who "are called unto the marriage supper of the Lamb"* a special blessing is pronounced. "New Jerusalem" is pictured as "coming down from God out of heaven, prepared as a bride adorned for her husband."† The church of God is the bride, and Christ is the husband. Marriage was thus in the New Testament associated with the most sacred observances and truths. It was more than a sensual or a sexual relationship. It was a union of heart, a communion of life. It was a love stronger than the love of child for parent. It was a bond which only death could normally sever. It was a sacrament which was typed by the relations of Christ and the church.

At the same time, the New Testament contains no word which indicates that a peculiar sanctity belongs to either the married or the single life. Each method of life is honorable; each is equally honorable. The course one shall adopt is to be determined by special reasons and circumstances, in reference to which the inspired record contains only principles.

These teachings of the New Testament formed the basis of the practices of the Christians of the first and second centuries. From these teachings they developed a system of rules and precepts unlike the original, and in certain respects antagonistic to these teachings.

The student of the Church Fathers who wrote before the Nicene Council of 325 is constantly surprised to note the warmth of the eulogies of chastity and of celibacy, and the severity of the denunciations hurled against sexual immorality. The virtue of chastity is

* Rev., xix., 7, 9.

† Rev., xxi., 2.

often made to appear as the *summum bonum*; and the vice of licentiousness as the unpardonable sin. Several of these writers, as Tertullian, treat the subject at length; and others, as Clement, Methodius, Justin Martyr, and Arnobius, by allusion or by argument, show the important place which it held in the thought of the first three centuries.

The Clementine Homilies are especially full and positive in their denunciations of sensual sins. Adultery is the mother of many evils. It is compared to "the mad dog," which destroys "all that he touches, infecting them with the unseen madness." It is "the cause of tumults, murders, and every confusion."* It is the duty of the Christian to shun association with him with whom one is in love. "The chaste wife, doing the will of God, is a good reminiscence of his first creation; for God, being one, created one woman for one man."† The praises of the chaste woman are sung with an ecstasy which belongs to the loves of Solomon's Songs. "(The chaste woman is adorned with the son of God as with a bridegroom) She is clothed with holy light. Her beauty lies in a well regulated soul; and she is fragrant with ointment, even with a good reputation. She is arrayed in beautiful vesture, even in modesty. She wears about her precious pearls, even chaste words. And she is radiant, for her mind has been brilliantly lighted up. Into a beautiful mirror does she look, for she looks into God. . . . Beautiful is the woman, not because she has chains of gold on her, but because she has been set free from transient lusts. The chaste woman is greatly desired by the great King; she has been wooed, watched, and loved by him.) . . .

* Clementine Homilies, Clark's Ante-Nicene Christian Library, 98, 99.

† *Ibid.*, 219.

The chaste woman loves her husband from the heart, embraces, soothes, and pleases him, acts the slave to him, and is obedient to him in all things, except when she would be disobedient to God. For she who obeys God is, without the aid of watchmen, chaste in soul and pure in body." * The husband, as well as the wife, is subject to certain duties. "He who wishes to have a chaste wife is also himself chaste, gives her what is due to a wife, takes his meals with her, keeps company with her, goes with her to the word that makes chaste, does not grieve her, does not rashly quarrel with her, does not make himself hateful to her, furnishes her with all the good things he can, and when he has them not he makes up the deficiency by caresses." † The wife shares with her husband labors and sufferings. The chaste wife "recognizes her husband as her lord, bears his poverty when he is poor, is hungry with him when he is hungry, travels with him when he travels, consoles him when he is grieved, and if she have a large dowry, is subject to him as if she had nothing at all." ‡ Adultery should be punished severely. It is "a very terrible thing, even such that it holds the second place in respect of punishment." § Against it both old and young should be on their guard. The presbyters should join the young in marriage in order to avoid the "entanglements of youthful lusts."

In the "Apostolical Constitutions," a work representing the life of the Church in the second and third centuries, the model of the wife is the thrifty and modest housekeeper and husband's helpmate, such as Lemuel represents in Proverbs. The husband is faithful to his wife. In this work, bishops, presbyters, and deacons are

* Clementine Homilies, 220, 221.

† *Ibid.*, 221, 222.

‡ *Ibid.*, 222.

§ Clement to James, 10.

forbidden marriage. If they are married at the time of their appointment, they need not repudiate their wives; but they cannot enter into nuptials after they have entered into holy orders. The deaconesses are likewise commanded to be single, either virgins or widows.

In the Apostolic Fathers, the earliest writings succeeding the inspired, chastity and the obedience of wives to husbands are commanded, the duties of husbands to their wives, as love and co-operation, are sketched, and their observance ordered. The Church solemnizes marriage. "But it becomes both men and women who marry to form their union with the approval of the bishop, that their marriage may be according to the Lord, and not after their own lust." *

The Pastor of Hermas, probably the most popular book in the Christian church during the second, third, and fourth centuries, a book which occupied a place similar to that now accorded to Pilgrim's Progress in English religious literature, contains a long passage in reference to a question that is still discussed. "I charge you," remarks the narrator, "to guard your chastity, and let no thought enter your heart of another man's wife, or of fornication, or of similar iniquities; for by doing this you commit a great sin. But if you always remember your own wife, you will never sin. But if this thought enter your hearts, then you will sin; and if, in like manner, you think other wicked thoughts, you commit sin. For this thought is great sin in a servant of God; but if any one commit this wicked deed, he works death for himself." The questioner asks, "Sir, if any one has a wife who trusts in the Lord, and if he detect her in adultery, does the man sin if he continue to live with her?" The answer is: "As long

* Ignatius to Polycarp, ch. v.

as he remains ignorant of her sin, the husband commits no transgression in living with her. But if the husband know that his wife has gone astray, and if the woman do not repent, but persist in her fornication, and yet the husband continue to live with her, he also is guilty of her crime, and a sharer in her adultery.* If she continue her vicious practices, the husband is to repudiate her; but he cannot marry again without becoming guilty of adultery. In this whole subject the husband and the wife stand upon the same ground, and are to be treated in the same way. Already has the doctrine of Christ found a lodgement in the literature of the people.

The high place of virginity in the affection of the Church is suggested by the conceit of Irenæus, who says, "As the human race fell into bondage to death by means of a virgin, so is it rescued by a virgin, virginal disobedience having been balanced in the opposite scale of virginal obedience." †

The reason of the great attention paid to the praise of chastity and to the denunciation of sexual sins, it is not difficult to find. It lies in the fact that licentiousness was the prevailing sin of the ancient world. As has been suggested in the last chapter, the world of Greece and of Rome was morally rotten. The apostle suggests in the first chapter of his epistle to the Romans the prevalence of gross vice. Seneca writes that "daily the appetite for sin increases, the sense of sin diminishes. Casting away all regard for right and justice, lust hurries whithersoever it will." ‡ Historian (as Tacitus) and satirist (as Juvenal) unite in painting Roman society in a horrible blackness. Messalina, the wife of Claudius I., represents the depth of shame to

* Pastor of Hermas, Fourth Commandment, ch. i.

† Irenæus against Heresies, v., xix. ‡ De Ira, II., 8.

which a Roman matron of the noblest rank could descend. If no more than a tithe of what is affirmed regarding Roman society is true, it is evident that licentiousness pervaded all classes of the people. Unnatural vices were fearfully common. Judges and generals, senators and emperors, were addicted to these lowest forms of indulgence. If Roman amusements, the circus and the arena, tended, by their cruelty and prevalence, to corrupt Roman society; if slavery vitiated the virile strength of the nation; if the practice of infanticide was common; if luxury and extravagance consumed great wealth and greater physical, intellectual, and moral vigor,—yet licentiousness was as common as any one of these vices, and its effects upon Roman society were perhaps as ruinous as their combined results.

Into a society thus constituted Christianity was flung. In a social life of this character Christians were obliged to live. Under such a moral environment the Christian family had its birth. It was, therefore, natural for the adherents of the new religion to make a strong and continued protest against these excesses. Indeed, the duty was imperative that they should place themselves with all the firmness possible in opposition to the moral rules and customs of the Roman world. In practice and in writing, they declare themselves in favor of chastity, and go so far as to attribute a special sacredness to a life of celibacy. Their fiercest anathemas are reserved for the adulterer.

To what extent the Christian conception of marriage and of the family penetrated Roman life in the first three centuries it is impossible to say. It certainly is not rash to affirm that the extent was not great. Yet the teaching of history allows the conclusion that

"Christianity was gradually withdrawing from the heterogeneous mass some of all orders, even slaves, out of the vices, the ignorance, the misery, of that corrupted social system"* of Rome. Composed mainly of the obscure members of society; subject to persecution by the emperors, and not always harmonious in itself; opposed not only to the prevailing philosophies, but also to social customs of great age and strength,—it is probable that the Church did not in its first three hundred years effect any considerable change in the domestic life of those who failed to accept the tenets it represented.

But among many of its adherents Christianity worked a moral change which was fittingly typed by the rite of immersion. It created the home. It gave the wife rights as well as duties. It gave to children a childhood. "The work of Christ," says Origen, "is evident everywhere. There is not a Christian community which has not been exempted from a thousand vices and a thousand passions. . . . Compared with contemporary pagans, the disciples of Christ shine like stars in the firmament."† In the early Church, women were beloved and respected. Christian Rome, it is affirmed, could count more heroines than pagan Rome could count heroes. No union between the sexes, save that of a life-long attachment, was suffered. The word "concubina," or "concubinalis," is never found on the grave of the Christian wife.

This ethical conception, impressed by dogmatic theology, and illustrated in the practice of the Church, gained a power which it has never lost. Marriage

* Milman, *Latin Christianity*, I., 50.

† *Contra Celsums*, I., 67 ; III., 29.

became a religious ceremony. It received the benediction of the bishop. It could therefore properly be contracted only with those holding the same religious opinions. The marriage of a pagan with a Christian was looked upon with hearty disfavor.

The influence of Christianity tended at once to elevate and to narrow the position of women. It elevated her position, for while the pagan ideal of life is essentially masculine, the Christian ideal is in part feminine. Justice, energy, strength, are the pre-eminent qualities of the pagan ideal; and mercy, love, gentleness, and humility, of the Christian. The coincidence of the characteristics of Christianity with the characteristics of the female heart resulted in the elevation of woman. This result was also achieved in other ways. In the realm of the emotions, and especially of the religious emotions, woman is superior to man. If she is inferior to him in her power of apprehending a system of truth, she is his superior in respect to her loyalty to individuals. Christianity demanded personal loyalty to a personal Christ as the first and comprehensive condition of admission to its church. Thus the influence of Christianity ennobled the position of woman. This increased power was manifest in various ways. Women flocked to the Church in large numbers, and were important factors in the conversion of the Empire. They embraced martyrdom with unflagging zeal and fortitude. Although not usually admitted to the priesthood, they performed ecclesiastical functions of minor importance. As deaconesses — an order for which may justly be claimed apostolic sanction — they were of peculiar usefulness in the great and arduous work of charity and of philanthropy. Of the asceticism which so early sprang up they were ardent defenders. In their house-

holds, their influence was more pervasive than in the Church. For the conversion of their husbands and sons and daughters they labored with constancy, if not always with wisdom, and often with success. The wife of Theodosius the Great was one of the most distinguished defenders of the faith. Augustine writes of the influence of his mother in the formation of his Christian character. The mother of Constantine bore an important part in the conversion of her royal son. In dignity and in useful influence, in social rights and family prestige, Christianity tended to elevate the place of woman. For force or passion as the basis of marriage — elements which when exercised degrade the husband more than the wife — was substituted love. The New Testament teaching was the foundation of practice.

But in one respect the position of the married woman was narrowed by Christianity. It has been already noticed, that in the civil marriage of the period of the later Republic and Empire, the wife remained in the guardianship of her own family. She did not pass into the control of her husband. The consequence of this method was that the power of her guardian became less and less, and that the power of her husband did not increase. She, therefore, came to occupy a situation of great independence as to both person and property. Against the loose marital bond of the civil marriage, which was indeed a mere species of wedlock, the Church uttered its protest. It was contrary to the teachings of the New Testament; it was opposed to Christian practice. In their repudiation of the civil marriage, the Christian moralists also repudiated that liberty and independence of the wife which were among its essential elements. Thus the legal position of the married woman was narrowed by the Church.

In reference to this double movement, a distinguished student of early institutions remarks: "The consequence was that the situation of the Roman female, whether married or unmarried, became one of great personal and proprietary independence; for the tendency of the later law, as I have already hinted, was to reduce the power of the guardian to a nullity, while the form of marriage in fashion conferred on the husband no compensatory superiority. But Christianity tended somewhat, from the very first, to narrow this remarkable liberty. Led at first by justifiable disrelish for the loose practice of the decaying heathen world, but afterwards hurried on by a passion of asceticism, the professors of the new faith looked with disfavor on a marital tie which was, in fact, the laxest the western world has seen. The latest Roman law, so far as it is touched by the Constitutions of the Christian Emperors, bears some marks of a reaction against the liberal doctrines of the great Antonine juriconsults." *

And yet the effects of this subordination were in part removed by the principle of love, upon which the Church placed increased emphasis, as the basis of marriage. Indeed, these effects were, in cases, more than set aside. For the love of husband and wife tended to give the wife that position of independence which she might desire.

Between Constantine and Justinian the Christian principle regarding the family was strongly impressed upon Roman law. The Digest of Justinian represents Roman law as thus formed. If to the pagan juriconsults the law owes its peculiar shape, it is Christianity which has given to it its gentle and noble spirit. The old law of the Empire favored marriage, the new en-

* Sir Henry Sumner Maine, *Ancient Law*, 150, 151.

nobled it. The old law proclaimed liberty of divorce ; the new law declared marriage indissoluble. When Christianity became a recognized religion, the bishops replaced the disciples of the ancient philosophy in the councils of princes. The imperial constitutions became, in a sense, commentaries on the Church Fathers. The Fathers were the origin of much of the legislation of Constantine and his successors. The Fathers deplored the evils of divorce ; the Emperors interdicted divorces by mutual consent. The Fathers demanded publicity of marriage ; the Emperors granted the request.

CHAPTER IV.

THE FAMILY IN THE MIDDLE AGES.

Insignificant position of family in middle ages; family subject to new and diverse influences. — Civil and social disorder disastrous as to domestic life; wars and licentiousness. — Contrast between morals of Romans and barbarians. — Salvian's appeal. — Position of the family among northern races; contrast between its fundamental principle and that of Roman family. — Position of the wife and mother, at once high and low. — Under Charlemagne family lost its autonomy. — Feudalism and the family. — Feudalism originated and fostered a new type of the family. — Feudalism tended to develop the individuality of the family. — Feudalism tended to degrade the social position of women of the lower class. — Decline of feudal system created judicial tutelage of woman. — Chivalry and the family; chivalry exalted womanhood. — Republics of northern Italy fostered social vices of the pre-Christian civilization. — Influence of the *spirit* of Christianity on family of middle ages excellent; influence of the church evil.

IN the cruelty, the rapine, the lawlessness, the sensuality, the ignorance, which compose the large part of the history of the middle ages, the family occupies an insignificant place. If in time of wars the laws are inoperative, much more ineffective are those civil institutions represented by and embodied in the family. The thousand years from the invasion of France by Clovis to the capture of Naples by Charles VIII., which the philosophic Hallam embraces in the middle ages, are filled with wars, civil and foreign, the overthrow of emperors, the sack of cities, the intrigues of contending factions, and with violence of every kind. In this period it is our duty, however, to consider the character

of the family. The family was, in this long period, the subject of various diverse influences of great strength, which tended to develop it along new lines.

It requires no argument to show that the natural effect of the civil disorder of the time was disastrous upon social life and domestic virtue. If warfare is the nurse of the hardy excellences of courage and endurance, it is the destroyer of the passive virtues of patience, trust, and love. The fires of sensual passions, breaking out under the Empire, continued to burn till they died because of a failure of the supply of fuel. War and pleasure were the pursuits of the Roman, and of those whom the Roman influenced most strongly. Commerce of every kind was despised. Wealth was amassed in the hands of a few nobles, who increased it by exorbitant rates of usury, and who even after successive sacks of the city were able still to boast of their treasures. It allowed and invited idleness; and idleness fostered dissipation. The emperor, the empress, the noble, the client, and the slave, were alike devoted to pleasures and to employments which were disastrous to the dignity of woman and to the proper position of the family. That noble men and pure women still survived the violence of war and the seductions of Venus is not to be doubted; but the careers of Theodora, the wife of Justinian, and of her friend Antonia, the unworthy wife of Belisarius, are significant of the corruption pervading the higher classes of Roman society. Charlemagne, magnified as the religious emperor, repudiated his first two wives, and, after the death of the fifth, he introduced into his home four concubines. The evils which corrupted the family were spread from the Rome on the Tiber to the Rome on the Bosphorus, and from Treves to Carthage.

The contrast between the manners of the Romans and of the barbarians in the fifth century is quite as unfavorable to the former as in the time of Tacitus. Four hundred years after the author of the "Germania" and "Agricola" wrote these small but priceless essays, Salvian thus endeavors to arouse the Romans to a sense of shame:—

"You, Romans, and Christians, and Catholics," he says, "are defrauding your brethren, are grinding the faces of the poor, are frittering away your lives over the impure and heathenish spectacles of the amphitheatre, you are wallowing in licentiousness and inebriety. The barbarians, meanwhile, heathens and heretics though they may be, and however fierce towards us, are just and fair in their dealings with one another. The men of the same clan, and following the same king, love one another with true affection. The impurities of the theatre are unknown amongst them. Many of their tribes are free from the taint of drunkenness, and among all, except the Slavs and the Huns, chastity is the rule."*

The overthrow of the Roman family was rather the cause of the overthrow of Rome than the decline of Rome the cause of the fall of its domestic institutions. It has been well said that Rome fell because it had lost the old Aryan idea of the family. The invasion of the Northern tribes was only the occasion of the ruin of a civil power which, disintegrated by its own vices, was tottering to its corner-stone. But the Northern barbarians, whose invasions occasioned this overthrow, had preserved the old Aryan conception of the family. Although the waves of the human deluge which for more than three hundred years rolled over

* Salvian, *De Gubernatione Dei*.

the Alps down upon the plains of Italy possessed distinct features, yet they had certain common characteristics. The invaders were vigorous in body, ignorant of learning, poor in purse. They lived in the open country, and in open huts. They cultivated the soil, and from it wrung a slight annual crop of corn. They owned large herds of cattle. They were by turns slothful and restless. Detesting work, they exulted in war. Gambling and intoxication were their chief vices, and hunting and war their principal sports. Their political constitution was democratic. The youth born of free parents, on reaching the age of manhood, was invested with the spear and shield,—insignia of his membership in the national commonwealth. All questions were publicly discussed and decided by popular vote. The generals, rulers, and magistrates, were chosen by the voice of the majority. Birth, as well as merit, influenced the selection. They were careless of their possessions, but jealous of their persons. The magistrates distributed the landed property of the tribe each year; but they were forbidden to imprison, or even to strike, a citizen. In war they were fierce and brave. To survive the death of their chief was infamy.

Among these Northern people, whose general features, we may believe, were not dissimilar to those which Tacitus attributes to the Germans, the family formed an important institution. The domestic virtues prevailed. The husband was the husband of one woman, and the wife the wife of one man. Princes were allowed more than one wife, but only for the sake of increasing the number of their alliances, and so their political power. Divorces, though prohibited rather by public opinion than by law, were uncommon.

Adultery was a crime punished with great severity ; but the Northern tribes were, with one or two exceptions, distinguished for their chastity. The women managed the household, the land, and the cattle, assisted by the slaves and those not able to fight. The women occupied a position of dignity. As wives, they were loved and consulted by their husbands ; as mothers, they were respected by their children. Marriage associated the husband and the wife in the same life of labor, danger, glory, or defeat. Wives accompanied their husbands on campaigns. The great invasions were migrations of peoples, comprising women and children as well as men. In case of defeat in battle, the women preferred death to servitude or shame. Chastity was their noblest crown. The men, like the women, were pure. From the shameless orgies of their Roman victims they turned away in disgust.

The family of these Northern peoples presents remarkable contrasts to the family at Rome. The Roman family was founded on the patriarchal theory, the German rested on the capacity to bear arms. The Roman family was a monarchy, in which the husband and father was the monarch ; the German was a republic, of which each who bore arms was a member. Among the Romans, power was confined to the one having most experience and wisdom ; among the Germans, peoples turbulent and unrestrained, to those whose vigor was the strongest. Among the Romans, all domestic ties were lodged in the hands of the father ; among the Germans, in a voluntary association of warriors. Among the Romans, the hearth-stone had a single master ; among the Germans, it had for its rulers the entire number of those in a family capable of bearing arms.

The position of woman in the German family appears to be a mass of contradictions and inconsistencies. No hypothesis regarding her condition can be made harmonious with the representations of all the Northern codes. One code grants to her the right of inheritance; another refuses it. One code causes the wife to be sold to her husband, who pays a price for her; another causes her to come to him bearing a dowry. These diversities are undoubtedly due, in part, at least, to the accidents of the various invasions. The condition of the German tribes before they came in contact with the Roman power allowed many and important rights to woman. The incapacity of woman of bearing arms is regarded as one of fact and not of right. Through a representative whom she may select she can and does bear arms. She has a personality and a patrimony. The old poems of the North celebrate the virtues of women as well as the valor of heroes. Women were so respected that they traversed vast stretches of lonely country with weakness as their only escort. Whatever their legal incapacity, it arose, not, as in Greece, India, and Rome, from their moral frailty, but from their physical weakness. Morally, the German woman was regarded as man's equal. In wisdom, prudence, and courage she was looked upon as the peer of her husband. Neither was she confined to the cares of the household. She guided the hand of her public agent and representative. In the battle, she stood in the rear to inspire the warriors. In the sacrifices, of religious rite, she did not kill the victim, but she stood near the priest, inspected the entrails, and pronounced the verdict. As a priestess, she was not, like the Roman vestal, separated from her home; neither marriage nor motherhood prevented her aspiring to this position. Honors at Rome were paid

to woman as a wife and mother; in Germany, honors were paid to her as a woman. In Iceland, which was never directly touched by the Roman influences, in the twelfth century, a kiss forced upon a woman was punished with exile.

The character of marriage and of the family was the result of the high regard paid to her. Faithfulness to wedlock prevailed. Adultery was punished with extreme severity. In Copenhagen, in the fifteenth century — which at that time retained its original purity — the guilty woman was buried alive, and her partner was beheaded. The abuse of her by her husband was an abuse of domestic rights, and it was an abuse which her parents or her brother might avenge and correct. From the power of her husband she could maintain a separate ownership of her property. As a mother, her rights were inferior to those of the father of the family; but as widow she took her husband's place in the family as its head and director.

But, as has been suggested, many were the inconsistencies in the German conception of the position of woman. She was often treated as a brute or a slave. Not infrequently she was immolated on the funeral pyre of her husband. The German well nigh worshipped her whom he despoiled. He often treated her as a brute, yet he confessed that she was more than human, and was linked to divinity. The more powerless he made her, the stronger the protection with which he surrounded her.

In the republic of each German family, woman was subject to the rule of those who bore arms; but under the strong and central government of Charlemagne the family lost its autocracy. As royal power arose, family and individual power declined. The king came to be regarded as the sole depositary of justice. The royal

tutelage replaced the domestic. The capitulary law of the great ruler failed to accord to women rights equal to those of men. The tutelage became a necessary result of the disorder and violence of the time. The physical frailty of women necessitated it. A social and political crisis succeeded the death of Charlemagne. His empire broke up into hundreds of little powers. The head of each arrogated imperial rule within the limits of his small domain. But the system of tutelage was still continued in this new régime of the feudal system. The tutelage only passed from the hands of the king to those of the feudal lord. Never was there a period in which was greater need of guardianship. For feudalism was in one respect the age of the sword. The fate, therefore, of those who could not bear arms was one of subjection.

But feudalism was more than the rule of force. It was also founded upon the ownership of land, and upon social relationships created by this ownership. It therefore established and fostered a type of the family unlike any type which had previously existed. This type was neither the patriarchal family nor that of the clan. It was the necessary product of the social condition and circumstances of the age.

If feudalism united the lord and his serfs in respect to military service demanded and rendered, it yet produced a complete social separation. While the lord lodges in his castle on the crest or side of the hill, his retainers inhabit the huts at its base. His family form his only companions. When not waging war, his associations are only with the five or six persons who are his social equals. If he is absent, it is to his home that he returns at the end of the journey or the close of a campaign. At his departure, his wife and children

are the last to wish him a godspeed on his quest. If feudalism failed both to regulate and to enlarge the society of the middle ages, it yet tended to develop the individual family. It was the source of noble ideals and sentiments, and gave birth to strong and vigorous character. It reduced the family to perhaps the simplest and most individual form which up to that time history had known. It bound husband and wife, parents and children, into a relation most intimate and strong. It separated them from society, and compelled them to find satisfaction and contentment in each other. It thus tended to place members of the family upon terms of absolute equality. Its tendency was to make the wife the social peer as well as companion of her husband. When he was absent searching for war or adventure, she remained his representative and the guardian of their common interests. His sovereign position contributed to give her a dignity and a distinction which she had never known. The children, too, and especially the eldest son, were elevated in honor and duty. The eldest son was in the eyes of his father as well as of his retainers the heir presumptive to the fief. The records of the time show the strength of the affections which united all the members of the household.* The family and not the individual, the family and not a single member of it, became the centre of social relationships.

The influence of the feudal system upon women of humble condition was not so healthful as upon those of high station. If the lord of the manor had the right to the military service of his retainers, he also enjoyed the right to the persons of the wives of his

* Vie de Guibert de Nogent, ch. iv., xii., xiii., quoted in Guizot's *History of Civilization*, vol. iii., 412-414.

retainers. They could not pay military service; therefore the lord exacted from them what they could give, and that was their honor. In all feudal countries from Switzerland to Scotland we find traces of this infamous custom. But its shame tended to effect its abolition. A pecuniary gift came to take the place of the personal service. The feudal edifice was torn down; and from this duty as well as from many other duties woman was delivered. Near the close of the feudal period women possessed rights which no laws had given them. They could enjoy the allegiance of vassals, levy troops, sign treaties, and act as sovereigns within the fiefs which they possessed. In the legislation of certain provinces, the laws were greatly in their favor. To the daughter were given the rights of a son. In other provinces her position was depressed. In the decline of the feudal system the husband came to be the representative of his wife. To the military power succeeded the marital. Her feudal incapacity as a woman was supplanted by her civil incapacity as a wife, an incapacity which has been transmitted into modern jurisprudence. When the feudal tutelage ceased, and the State assumed the guardianship which the feudal lord had exercised, the tutelage of women should have come to an end; but the force of habit caused it to persist. The ground of the tutelage suffered a change, however, from a physical to a moral necessity. At the end of the middle ages the tutelage of women had become in large part judicial, and had disappeared from many sections of Europe; but her position in law was still uncertain.

If the peculiar institution of chivalry is not a direct offshoot of feudalism, feudalism at least contributed to its power. And it was from the feudal family that

chivalry received certain of its most distinguished and important features. Of this family the knight might be a son; and of its courage, love, reverence for the domestic virtues, and regard for women, he was the probable inheritor. The high ideals which were thus cherished are indicated in the pledges to which the knights swore: "To fear, revere, and serve God religiously; to fight for the faith with all their strength, and to die a thousand deaths rather than renounce Christianity; to maintain the just cause of the weak, such as of widows, orphans, and maidens, in a good quarrel; to expose themselves for them according as necessity required, provided that it was not against their own honor, or against their king or natural prince; that avarice, recompense, gain or profit, should never oblige them to do any action, but only glory and virtue; that they would hold themselves bound to conduct a lady or maiden; they would serve her, protect her, and save her from all danger and all insult, or die in the attempt; that they would never do violence to ladies or maidens, although they had gained them by arms, without their will and consent; that, above all things, they would be faithful, courteous, humble, and would never fail in their word, for any ill or loss that might thence happen to them."*

How far the brave and romantic knights who pledged themselves to these noble services were able to maintain their oaths, it is impossible to say. The actual condition of society in the reign of chivalry was tempestuous and gross; but these moral ideals were preserved amid the grossness and crimes of the eleventh and the succeeding centuries. It is certain that humanity, courtesy, pity, hospitality, were thus fostered. It

* Guizot, *History of Civilization*, iv., 22-24.

is also not to be questioned but that chivalry furnishes many noble examples of devotion to women. "You should elect," is the advice given in an ancient history to a knight, "a lady of noble blood who has the ability to advise and the power to assist you; and you should serve her so truly and love her so loyally as to compel her to acknowledge the honorable affection which you entertain for her. . . . Pride will be entirely effaced from the heart of him who endeavors by humility and courtesy to win the grace of the lady. The true faith of a lover will defend him from the other deadly sins of anger, envy, sloth, and gluttony; and his devotion to his mistress renders the thought impossible of his conduct ever being stained with the vice of impurity."* So far did this regard for woman extend that James II. of Aragon commanded that any man travelling through his dominion with a lady of noble birth, except he be a criminal guilty of murder, should be safe from pursuit or attack. With the decline of feudalism also occurred a decline of chivalry; but so long as both institutions lasted, they served, the one to form a noble type of the family, and the other to exalt womanhood.

The republics which sprang up in the north of Italy in the middle ages cherished ideals and methods far removed from those of chivalry. They were a sort of revival of the ante-Christian civilization, yet their social condition was formed in part by the laws of the northern nations. Florence, Genoa, and Venice revived the vices as well as the virtues of the ancient civilizations. As in Rome and Athens, public life demanded and consumed the energies of the people. Each city struggled

* *L'Histoire, etc., du Petit Jehan*, i., 36, quoted in Bruce's *Gesta Christi*, 265.

to surpass its rival, and this strife was mainly a strife for wealth. The home, the family, therefore, were degraded. Woman was regarded as the inferior of man, the servant of his desires, the instrument of his pleasure. From many rights the municipal statutes excluded her. She was forbidden association with men in public gatherings. She was forbidden to marry beyond her own municipality.* The morals of the time were most corrupt. If for a brief space Savonarola made Florence a "city of God," the reformation which he wrought was but temporary, and the return of the tide of wickedness swept him on to death.

If chivalry was primarily an outgrowth of feudalism, it was colored by the Christian doctrine and practice. The knight plumed himself as the defender of the Cross, and if, in this capacity, he was guilty of sins which are now regarded as heinous, he was only following an example set by priest and pope. The influence of the spirit of Christianity upon the family of the middle ages tended toward its purity. The religion of Christ, remaining in its original strength and nobility, touching domestic life, made that life sweet and joyous. But throughout this period Christianity, as such, had slight influence. The Church gained in power, and became an institution which, if neither "holy" nor "Roman," was undoubtedly an "Empire." Its influence over the family it is not difficult to show was evil, and, with a few exceptions, in both time, place, and practice, only evil.

* *Gide's Étude sur la Condition Privée de la Femme*, 332-338. We desire to acknowledge great obligations to this admirable work for facts and suggestions used in the preparation of this chapter.

CHAPTER V.

THE FAMILY AND THE CHURCH, CATHOLIC AND PROTESTANT.

Two opposite ideas in the early Church. — Growth of sacerdotal celibacy. — Immoralities consequent upon celibacy of the clergy. — Evil effects on the family. — Opinion of the Church as to the sacredness of the marital bond. — Antagonism between the ecclesiastical system and the spirit of Christianity. — Canon law and the family. — Marriage a sacrament. — Influence of the Reformation on the family; Germany, Switzerland, England. — The Puritan revolt in its relation to the family. — Present position of the Church.

THE opinion of the Church upon questions relative to the family crystallized slowly. At the outset the Church was met by three different codes, the Roman, the Jewish, and that outlined by Christ in the New Testament. To the first two, woven into the fabric of society by centuries of custom, the Christian system was in many ways directly opposed. The shock of the conflict between Christianity and heathenism was nowhere more keenly felt than upon all questions growing out of the relations of the sexes; and Christianity did not at once prove conqueror. The Church throughout its early history was swayed by two distinct and in some respects opposite ideas. The first was the belief in the superior sanctity of the celibate life; the second was the sacredness of the marriage bond. Both these ideas were utterly foreign to the loose conception which prevailed concerning sexual relations in the days of the Empire, when unbridled license was the rule of

even sober lives, and divorces were almost more frequent than marriages. Although the pure conceptions held by the Christian religion concerning the family made little impression upon such a society until after the overthrow of the Empire, the Church held from the first the extreme sanctity of the marriage relation. Upon this point no branch of the Christian Church has ever wavered. The spirit of asceticism, prominent among the early Christians, also led to a belief in the superior sanctity of the celibate life, a belief still potent in the Roman Catholic branch of the Church. The same spirit likewise proclaimed purity as the rule of married life, a rule supported by the teaching of Christ and the apostles. Nevertheless, the conception of marriage held by the early Fathers was gross and material. By as much as celibacy was extolled, by so much was marriage abased as an unworthy concession to the flesh. The spiritual relationship involved in the state of marriage seemed to have been little regarded. Its pro-creating design was made prominent. Yet from the earliest period of the history of Christianity, the sanction of the Church was sought and its blessing invoked upon the marriage rite.*

In the period succeeding the apostolic age, the tendency toward celibacy became perceptible in both laity and clergy. As applied to the clergy, it was merely an expression of the necessity of absolute purity in the Christian minister. As applied to the laity, it was the result of the Manichæan doctrine, which looked upon the body as evil, and as therefore to be crucified with all its desires and passions. Before the close of the fourth century one writer asserts the belief that those married cannot attain salvation, and he forbids the of-

* Neander, i., 284 ; eleventh Am. ed.

fering of prayers in their homes.* About the year 385, the first definite rule was issued commanding perpetual celibacy upon the clergy. The motives of its promulgation were not only the desire of purity in the ministers of the altar, but also the purpose that the vast accessions of property which the Church was receiving should not be in peril of being spent by the ecclesiastics for the benefit of their families, but that it might be retained intact by the Church itself. In this movement the laity sympathized. The holiness and the need of purity of the priests was a favorite theme with both the people and the great minds of the time. For a single lapse of virtue the priest was liable to suffer death by stoning. The people themselves were urged to abandon the world and to live the life of the hermit. The rise of monachism tended to overthrow the family. When we read, in the books of the fourth and fifth centuries, that the abandonment of all social relationships, rights and duties, and the adoption of the life of the monastery or of the nunnery, shorten the path to heaven, and when we know that every pulpit held up the hermit life as an ideal to be embraced by every Christian, we are surprised that the world did not flee from itself into the convent or the desert. Down to the Protestant Reformation this life was presented as one of peculiar sanctity and glory.

The difficulties which the Church encountered in enforcing its rules of celibacy upon the priesthood, and the excesses into which this rule impelled the clergy, were notorious. The writings of St. Jerome contain

* Eustathius, Bishop of Sebastia, Cappadocia. See Lea's *Sacerdotal Celibacy*, 2d ed., p. 61. This learned and comprehensive work has proved a great aid in the writing of the influence of Christianity upon the family of the middle ages.

illustrations of the unlawful unions of the ecclesiastics. The councils with scarce an exception legislated on the delicate question. The prohibitions regarding the residence of mothers and of sisters in the monasteries are too suggestive of the evils against which the Church struggled in vain. Overcome by these constant and grave difficulties, the Church occasionally surrendered all attempts to maintain purity, and allowed unlicensed concubinage. The endeavors of Charlemagne and of Louis le Débonaire for the restoration of clerical purity were fruitless. The former asks whether the only distinction between a layman and a minister is not that the minister does not carry arms, and is not publicly married. He threatened the severest punishments against those guilty of the outrages which converted convents into brothels. But punishments were seldom inflicted. If a priest married, the penalties of the canon were at once and heavily laid upon him. "A priest's wife," was the sentiment prevailing among the Anglo-Saxons, "is nothing but a snare of the devil, and he who is ensnared thereby on to his end, he will be seized fast by the devil." But a course of licentiousness seldom subjected him to any ecclesiastical or social disability. The immortal love of Abelard and Heloise illustrates the moral sentiment of the period. "In a worldly point of view, it was better for him, as a churchman, to have the reputation of shameless immorality than that of a loving and pious husband; and this was so evidently a matter of course that she willingly sacrificed everything, and practised every deceit, that he might be considered a reckless libertine, who had refused her the only reparation in his power."* The morals of even the successors of

* Lea, Sacerdotal Celibacy, 269.

St. Peter in the four centuries succeeding Hildebrand, who had founded his theocratic system upon the proposition that ecclesiastical aggrandizement constituted a complete atonement for every sin and crime, were so shameless that even their narration brings a blush to the cheek. These morals are well illustrated in a speech which Cardinal Hugo made to the people of Lyons, on the occasion of the departure of Innocent IV., in the year 1251, after a residence of eight years:—"Friends, since our arrival here, we have done much for your city. When we came, we found here three or four brothels. We leave behind us but one. We must own, however, that it extends without interruption from the eastern to the western gate."*

That the influence of the ecclesiastical system of the middle ages on the family was on the whole evil, is not open to question. The evidence is too abundant, diverse, and conclusive to allow of doubt. It drove no small share of the population into an apparent asceticism, and one which in most cases was only apparent. It thus shut the priest away from a home, and introduced him to the degrading influences of a potent vice secretly practised. But its influence upon the family of the laity was even more disastrous. The immorality of the clergy tended to lead those, who looked up to them for spiritual guidance, into practices akin to their own. It also rendered their rebuke of vice worthless. "Since the priesthood mostly lead evil and incontinent lives, they soothe rather than excite the consciences of the worldly," is the logic of one writer.† In a bull issued in 1259, Alexander IV. ventures to declare that

* Lea, 342. For other shameless illustrations of the depravity, see ch. xxi.

† Cæsarius of Heisterbach, *Dial. Mirac. Dist. xii., c. xix.*

the people, instead of being reformed, are actually corrupted by their ministers.

Such were the demoralizing effects of the attempt to enforce the doctrine of the extreme sanctity of the celibate life. Had not this doctrine been happily offset by a belief in the sacredness of the marriage bond, the picture of society during the centuries of the temporal power of the Church would be a picture of complete moral ruin.

While the influence of the ecclesiastical system was thus corrupt and corrupting, the Christian spirit was still abroad, pure and purifying. Celibacy was most holy, yet the marriage bond was holy. Marriage itself might be an unworthy concession to the weakness of the flesh; but the tie, once sanctioned and blessed by the Church, was forever binding.

In the first centuries in which Christianity came in conflict with heathenism, the pure lives of Christians, —and especially of Christian women,—presented a striking contrast to the depraved manners and morals of the pagan families. Nonna winning her husband Gregory over to the true faith, and training her son, Gregory of Nazianzus, as Hannah trained Samuel; Anthusa of Antioch, left a widow at the age of twenty, and devoting her life to the culture of a son, whose name, John Chrysostom, allows the conclusion that he was well worthy of such devotion; and Monica, who sowed the seeds of divine truth in the heart of her son Augustine,—each illustrates the Christian influence of the Christian home of the first centuries. Likewise in the later period were the saving influences felt amid the prevailing corruption. A biographical sketch of the twelfth century presents a picture of the piety of a family which is held up as a model. The husband and

the wife are represented as gaining their support by honest labor, frugal, generous to the poor, and sympathetic in the sufferings of the afflicted. They take great pains in the training of their children in faith and good works. Sleeping on beds of straw, they surrender their better beds to the poor; and, although their whole house is open to the needy, they especially reserve one chamber for their entertainment.

Christian families of like devotion to noble services and purity of heart undoubtedly existed throughout the time of the middle ages, as well as during the power of the Holy Roman Empire.

It is thus evident that upon many questions relative to the family the spirit of Christianity was at war with the doctrines and practices of the Church. This antagonism is clearly seen in comparing the position which belongs to woman under the Christian dispensation with that assigned to her by the narrow bigotry of ecclesiastical canons. The spirit of the Christian religion raised woman to be the peer of man in the moral and social world. It honored her virtues, protected her weakness, and glorified her position as wife and mother. The Church, on the other hand, deprived her of all rights and privileges before the law, of all power in the family, and, by a legal fiction, even robbed her of her own existence.

As the civil power of the church increased, the canon law gradually came to be regarded as the common law upon all matters upon which it treated. This law, the product of the decretals of popes and decisions of councils for twelve centuries, defined the legal status of woman and the family during the temporal supremacy of the Church. The framing of this law was in the hands of unmarried ecclesiastics, and reflected as little

as possible the wishes or needs of women themselves. This law differed much from the customs of the primitive Church. Like the Roman law, it relegated woman to domestic duties only. It limited the sphere of her activity to the home. It forbade her all offices and duties which belong, according to common conceptions, to men. Her character formed, in the opinion of writers, the bar to her entrance into a life at all public. The publicists and canonists emphasize her frivolities, her possession of the opposite defects of avarice and prodigality, of obstinacy and laxity, of perfidy and of fickleness. "The law," says Bodin,* "has forbidden to women all burdens and offices proper to man, such as judge, advocate, and similar affairs, not only from prudence, but as much because manly actions are contrary to the sex, to feminine shame and modesty." Many influences, however, were present in society to modify, to a greater or less degree, the position of woman as defined by the canon law. A disorganized condition of society marked the period of ecclesiastical supremacy. The Roman law, the spirit of feudalism, and certain national customs, materially modified, in those countries where they obtained, the social place of woman as determined under the canon law.

The elevation of marriage into a sacrament, however, gave the Church complete power over this relation. The Church decided the conditions under which it might be contracted or dissolved; and for the enforcement of ecclesiastical rules the civil power lent its arm.

The principle upon which the canon law was based, in its dealing with marriage, was that marriage was a necessary evil. The institution was to be tolerated,

* De la République, l. vi., c. 5, p. 735.

of the aged, and of the helpless poor, represent duties which can be far more effectively performed in the small *imperium* of the family than in the large *imperium* of the State. It is in the family, also, that those moral qualities, as courage, justice, and prudence, which are essential to the preservation of the State, may be most carefully and completely trained. If Rome had maintained the early strength and purity of her domestic institutions, she might have remained the mistress of

fancies regulated by law; and the execution of the law would be rendered impossible, owing to the uncertainty of the cases in which marriage was to be forbidden. Nor is there any reason to suppose that marriages are to any great extent influenced by considerations of this sort, which seem too distant to be able to make any head against the irresistible impulse of individual attachment. Lastly, no one can have observed the first rising flood of the passions in youth, the difficulty of regulating them, and the effects on the whole mind and nature which follow from them, the stimulus which the mere imagination gives to them, without feeling that there is something unsatisfactory in our method of treating them. That the most important influence on human life should be wholly left to chance or shrouded in mystery, and, instead of being disciplined or understood, should be required to conform only to an external standard of propriety, cannot be regarded by the philosopher as a safe or satisfactory condition of human things. Nor is Plato wrong in asserting that family attachments may interfere with higher aims. If there have been those who 'to party gave up what was meant for mankind,' there have certainly been those who to family gave up what was meant for mankind or for their country. The cares of children, the necessity of procuring money for their support, the flatteries of the rich by the poor, the exclusiveness of caste, the pride of birth or wealth, the tendency of family life to divert men from the pursuit of the ideal or the heroic, are as lowering in our own age as in that of Plato. And if we prefer to look at the gentle influences of home, the development of the affections, the amenities of society, the devotion of one member of a family for the good of the others, which form one side of the picture, we must not quarrel with him, or, perhaps, ought rather to be grateful to him, for having presented to us the reverse. Without attempting to defend Plato on grounds of morality, we may allow that his conception of the relation of the sexes takes rank among the great original thoughts of mankind." — *Jowett's Plato, Introduction to the Republic*, vol. ii., 130-132.

the world. Whatever may be the political form of government of any modern State, if it is training its families in the cardinal virtues, its beneficent continuance is well assured.

Marriage and the family hold an important relation to the State by reason of the fact that marriage is a status. It is usually agreed that marriage is more than a civil contract. It is not simply an agreement between a man and a woman to become husband and wife. It is an entrance also into a relationship to the State different from that formerly held. It has changed the legal position of each in and in respect to the rest of the community. It is thus a status, and, "in this view," as remarks Justice Story, "it has some peculiarities in its nature, character, operation, and extent of obligation, different from what belongs to ordinary contracts."*

Likewise, Fraser, holding that marriage is a contract, yet affirms that, "unlike other contracts, it is one instituted by God himself, and has its foundation in the law of nature. It is the parent, not the child, of civil society."† The institution of marriage and of the family and the institution of civil society thus act and re-act on each other. The intimate relation of these two institutions, writers are liable to overlook. Milton, in his writings regarding divorce, committed the fundamental error, in an argument which is in other respects masterly, of confining his attention to marriage as a simple contract and to divorce as a simple dissolution of this contract. Marriage is far more than a contract, and it forms relations which no contract, as such, can create, and which no dissolution of the contract can annul. In every marriage the State may be said to be

* Story, *Conflict of Laws*, § 108 n.

† Fraser, *Domestic Relations*, I., 87.

one of the parties, and in every divorce it has an interest. Perhaps the most important element in marriage is not the relation of the contract to the parties themselves, but its relation to the State; and certainly the effect of divorce upon society is more important than its effect upon the parties themselves. The family and marriage form the best basis of social order; and whatever has influence over them also has influence most potent over civil society.

If the aim of marriage on its legal side is to regulate the sexual impulse, and to provide the best basis for social order, its aim on what may be called the personal side is even more comprehensive. Its design in this respect seems to be the fulfilment of the ends of those who enter into it. The nature of those ends in an individual case may be very different from what they are in general, on the basis of a correct theory of marriage. Perhaps the most comprehensive end of life is the possession of the noblest personality. This aim marriage tends to win. But its method is simply the Christian method of saving life by losing it. For the essence of marriage is the surrender of personality; it is the surrender of self to another. But in and by this surrender each receives back the other, who has been thus enriched by the sacrifice. They are, indeed, "no more twain." The personality of each is ennobled and enlarged by the personality of the other.

It is also worthy of remark that the family appears to be a type of the divine government. The family and the domestic relationships interpret those names by which God makes himself known to man. Power and obedience, reciprocal love, mutual rights and duties, as existing in the divine government in its relation to man, are made intelligible by the corresponding qualities

prevailing in the human family. In its narrowest, as well as in its broadest sense, the family is the medium of a divine revelation. Into a family was Christ born, in a family Christ lived; from the family, also, we receive those conceptions of God, as Father, Brother, and Friend, which we believe most truly represent his character.

In summing up, then, the more important elements in marriage, it may be said that marriage is the union of one man and one woman, which, having its natural basis in the sexual instinct, is grounded in an exclusive affection of each for the other. Thus established, it has for its aim, on the divine side, the continuance of the race, the protection and education of children, and the development of the character of each; and having, on its human side, for its legal aim, the regulation of the sexual impulse, and the furnishing of the best basis for social order, and for its personal aim the fulfilment of the great ends of life of those entering upon it.

Although marriage may be designed for the regulation of the sexual impulse, it is not designed for the gratification of that impulse. The account of the creation contains no intimation that marriage was established in order to indulge carnal desire. The remarks of Christ relative to the institution are free from any suggestion of this nature. Paul's treatment of the theme, as seen in 1 Cor., vii, allows the inference that regulation and not simple gratification is its purpose. Even if it should be declared that he allows marriage for the lower purpose of the satisfaction of the sexual appetite, it is to be remembered that he was trying to bring within the bounds of decency the most licentious community of the ancient world. The Bible furnishes no foundation for the conclusion that

sensual gratification is an aim of marriage. It is remarkable that as yet no attempt has been made to apply the fundamental principles of Christianity to the regulation of the sexual relation in marriage. Powerful as these principles have been in forming and maintaining a chaste life among the unmarried, thus far the central doctrine of the Christian religion, that the lower nature must be made subservient to the higher, has not been brought to bear with any degree of force upon men and women in the marriage relation.

While we cannot admit, therefore, that sexual gratification enters into the purpose of a true marriage, it is nevertheless true that it forms an element of marriage, and a most important element. The rightfulness of its indulgence depends upon the higher considerations to which allusion has been made. When, as a result of its satisfaction, a human being may be called into existence under other than the most favorable conditions, this satisfaction constitutes a wrong. Every child has the right of being well born. It is the duty of parents to make the pre-natal conditions of their child the most favorable to the development of a strong body and mind. To allow a physical appetite to overthrow these conditions is a sin. Furthermore, if this gratification tends to dethrone the spiritual element and aim of marriage, it is also a wrong. The lower factor should not be permitted to degrade the higher. Sexual gratification should be invariably subjected to the great aims of the well-being of children and of the development of character. The precise degree of its proper subordination is a question which is rather physiological than philosophical; but the scope of this chapter allows the remark that the peril is potent lest the constant gratification should tend to

deprave the high and just aims of the institution of marriage.

Outside of the bonds of wedlock sexual intercourse is a sin against the children which may possibly result. Children thus born are branded with shame from the hour of birth. They cannot, usually, receive that training which is their due. This act, therefore, becomes a possible sin against society, which is obliged to care for the human waifs which are thus flung into its bosom. But, moreover, sexual intercourse outside of marriage is a sin against the most sacred laws and principles of humanity. The complete union of heart and life of two individuals has its fitting symbol in their physical union. Sexual intercourse of this sort degrades the symbol into an emblem and element of physical pleasure. What should take place only when heart and life of two persons are closely united does thus take place when the heart and life are separated by celestial diameters. Both parties sin against their own bodies and souls. They literally make beasts of themselves. It also becomes evident from what has been said that marriage is not a commercial partnership. Its aims and factors are far removed from the pecuniary. As an institution either human or divine, it is founded upon another basis than that of a commercial relation.

CHAPTER VII.

THE FAMILY AS A BASIS OF SOCIAL ORDER.

In modern times the individual the legal and social centre; in ancient, the family. — Elevation of the individual above the family caused by ethics of Christianity and by Protestant Reformation. — Social and political theories of last three hundred years contributed to rise of individualism: Bacon, Milton, Locke, Rousseau. — Present tendency in United States towards individualism; corresponding depreciation of the family. — Advantages and disadvantages of the growth of individualism. — The family the conservative element in society. — General methods and measures best fitted for restoration of family. — The present urban drift of population tends to foster individualism; rural life fosters the family.

IF the individual is the social and legal centre of modern life, the family was the social and legal centre of the ancient world. The movement of society from the family toward the individual has been constant and general. The ancient law knew little or nothing of individuals; it recognized the group of individuals, the family. The modern law is chiefly concerned with single human beings, and takes slight cognizance of the group. As a distinguished student of institutions remarks, "the movement of the progressive societies has been uniform in one respect. Through all its course it has been distinguished by the gradual dissolution of family dependency, and the growth of individual obligation in its place. The individual is steadily substituted for the family, as the unit of which civil laws take account." * In modern jurisprudence, it is the in-

* Maine, *Ancient Law*, 163.

dividual only who is guilty of the crime committed ; in the ancient, the crime is an act of the family corporation. In modern jurisprudence, it is the individual only who suffers the legal penalties of his crime ; in the ancient, not only the individual, but also his kinsfolk thus suffer. This individuality of the family appears in German as well as in Roman law. If the family as the unit of society was less prominent in the laws and customs of Greece than in those of her sister republic, in the writings of her greatest logician the family is elevated above every other institution. Aristotle holds very clearly and strongly that the unit in the social fabric is the family. If Plato dissolves the family and the relations of the family in his vast sea of communism, his great pupil places the family as the very foundation of political order, and affirms its relations to be the basis of the different forms of human government.

Toward the elevation of the individual above the family two causes have mightily worked. The one, the moral teachings of Christianity ; and the other, the Protestant Reformation. The Bible addresses society, not as an aggregate of individuals, but as single human beings. It emphasizes the infinite worth of each soul. Its advice and commands, its invitations and warnings, its appeals and threats, its instruction and promises, are designed for each person as a responsible moral agent. It represents God as the Father and Ruler of each man ; Christ as the Saviour of each man ; and the Holy Ghost as the Sanctifier of each man. Wherever the Christian system has penetrated, founded upon this divine book, it has borne this individual message to the individual. Assuming most diverse ecclesiastical forms, adopting doctrines which appear to be fatalistic in their philosophy,

unmoulded and frequently degraded by state-craft, Christianity has never hesitated to affirm the single and undivided responsibility of each individual. It has not viewed the human race as a whole; it has regarded it as composed of, and separated into, individual units. It has not looked upon the family as a unit; it has considered the family as composed of, and separated into, several individual units. It has held the individual, having a conscience and free-will, to be himself either blameworthy or deserving.

But the influence of the Protestant Reformation of the sixteenth century, as well as of Christianity, contributed toward the elevation of the individual above the family. The Reformation was a protest against several things. It was a protest against ecclesiastical supremacy. It was a protest against ecclesiastical domination in the sphere of the personal intellectual life. It was a protest against ecclesiastical domination in the sphere of the personal spiritual life. But to whatever point of difficulty the protest was aimed, it resulted in the elevation of the individual heart and mind as opposed to the sentiment and faith of the Church universal and Catholic. It substituted the judgment of the individual for the judgment of a hierarchy.

From the plant of the Reformation, as it sprang from and came to fruitage in Christian soil, were taken seeds which have been rich in the depreciation of the family and in the appreciation of the individual. The Reformation has profoundly modified the thought and social life of the last three hundred and fifty years. It gave a lasting impulse to the growth of individualism. It was in accord with those powerful tendencies which have arisen since its birth in literature, society, government, and law. These tendencies have constantly

resulted in withdrawing the family and in pushing the individual towards the front of our thought. The distribution of the Bible in the vernacular caused the German and the English people to emphasize the right of private judgment, and the responsibility of each man for his intellectual and moral character. The advent and the spread of the Puritan idea made prominent the personality of each person as well as the personality of God. Bacon and the Cartesian philosophers, throwing off the trammels of the scholastic metaphysics, made it the duty of each man to search for the truth for himself. Milton, in poem and treatise, pleaded for the liberty of the individual. His loose notions respecting divorce were to a large degree the corollary of his general social theories. Locke, indirectly, through his sensational philosophy, and directly, through his essays on government, placed the single man, and not an accredited system, as the centre of social and legal order. The French philosophers of the middle of the eighteenth century, and especially Rousseau, followed the earlier English metaphysicians in the tendency to elevate the individual above every social institution. Transported to the New World, individualism flowered into democracy, and democracy, in turn, developed a more intense form of individualism. The political principle upon which was waged the contest of the American Colonies for independence, that government derives its just powers from the consent of the governed, was the development of the social principle of the supremacy of the individual. The assertion, in the Declaration of Independence, that "all men are created equal," was simply the application of a current French notion of the equality of individuals, as the assertion of the "inalienable"

right of "liberty" was simply the application of a current English notion of individual freedom. The French Revolution stretched this theory to such a length that it broke into fragments. The American Revolution built on it the State and social order.

At the present time in the United States the tendency toward individualism has a potency commensurate with the force of those powers which have for nearly four centuries been directly contributing to its development. It is felt strongly and widely. It is seen in the emphasis placed on the individual as a factor in the administration of civil government. It is seen in the disregard of and almost contempt for "blood." It is seen in the larger legal rights given to women, and in all the discussions regarding their "rights." It is seen in the movement for the higher education of girls. It is seen in all those conditions of social life which open larger spheres of work to women. All these results signify the corresponding shrinkage of the family as a social and legal unit. The mutual rights and duties of its members have been lessened. The home, as a home, has less influence over husband, wife, and children. The family is divided by diverse social, educational, and ecclesiastical preferences. The personal interests of each member have increased in number and importance. Each member has come to think and labor for himself more constantly and more strongly than of old. The cosmopolitan character of even the most private life has tended to separate and to individualize the position of each member. That social theory for which Mill argued in his essay on the "Subjection of Women," and which Herbert Spencer reaches as the result of his philosophy, has approached its realization; the individual has come to be regarded as the crown

and the centre of social and legal order. The family, as an institution of prime importance, has passed away.

Of itself, this aggrandizement of the individual awakens only joy. It runs along the line of the noblest progress of the modern world. It results in advances and advantages in many departments of life. It increases the dominance of the forces which work for righteousness and truth. But it is accompanied by serious perils, and already certain of its evil consequences have become apparent. Out of this tendency toward excessive individualism has sprung much of the socialism which threatens both the European governments and the American commonwealth. Socialism is the product of political individualism. It is founded on the tacit denial or implied abrogation of the rights of others beside the individual himself. The individual forgets he is a member of a social order, and that if of that body he may claim certain rights, to that body he owes certain duties. The contempt for civil law, the willingness to adopt mob-measures,—sentiments not uncommon among the men of the people of the large cities,—are the effects of this tendency toward individualism. The Cincinnati riots of the spring of 1884 and the Chicago mobs of the spring of 1886 were simply the expression of an intense, long-repressed, as well as a much-abused, individualism.

Not only in the State, but in the family also, is the evil result of this tendency made evident. The family, which should be the source and fountain of the purest and most lasting influences, has quite ceased to exist as a social unit. Society has thus lost one of its most important elements of noble permanence. One of the supports of the social order has fallen. It is to the family that the commonwealth looks for conservative

tendencies. The individual is a radical, and progressive. The Conservative party in English politics is composed mainly of those who have strong affiliations with their families. The Liberal party is in great part made up of those who emphasize the importance of the individual in public life. In the United States, therefore, with its special need of conservative influences, is the demand serious for a return to the family as the social unit.

Any movement, therefore, to restore the family to its high place, both for the sake of the good influences of which it is the parent, and for the sake of repressing an undue and perilous individualism, is of great importance. Such an attempt can be made only by means of general measures. It cannot be the direct product of civil law. Civil law recognizes only individuals. Its penalties are visited on individuals only. The American Constitution forbids such penalties, not uncommon in English procedure, as attainder and corruption of blood. By general methods must the restoration be made.

Every member of the household should be impressed in every possible way with the importance of the family. Each finds himself, at his first consciousness, a member of a family. The birth is the birth into a home. As a member of a home should he feel it his duty, as well as his privilege, to remain. The husband and father should learn that the demands of his family are of an urgency equal to the demands of business. He should constantly recognize himself as the "house-band" which unites the body into an organic whole. The wife and mother should be impressed with the dignity of her position. The children should feel the ties of home as stronger links than all other associations. The basis of

the family as a trust should receive stronger emphasis. The family is founded upon a confidence of each member in every other. Whatever measure may serve to strengthen this confidence should be fostered.

It were also of advantage to the influence of the family as a social institution if the present drift of population from the country to the city should come to an end. This drift is an acknowledged fact.* Urban life, through its variety and intensity of interests, tends to develop individualism; rural life, each home removed from its neighbor, tends to develop the family. The struggle for wealth, the appetite for excitement, the opportunity for the satisfaction and development of personal taste, of the metropolis, tend to develop individualism; the calm, the conservatism, and the simplicity of the country tend to develop the family. In time, the tide of population, which now sets so strongly toward the city, will turn, and will here, as in England, run toward the country. This change cannot but have a healthful influence upon the family as the centre of social and legal order.

* In 1790, of every 100 persons in the United States, 3.3 lived in cities; in 1810, 4.9; in 1820, 4.9; in 1830, 6.7; in 1840, 8.5; in 1850, 12.5; in 1860, 16.1; in 1870, 20.9; in 1880, 22.5. (Compendium of the Tenth Census, p. 8.)

CHAPTER VIII.

THE FAMILY AND ITS INDIVIDUAL MEMBERS.

Difficulty of the question of the relations of the members of the same family. — The relation of husband and wife formerly one of superiority and subordination, at present one of practical equality; origin of this conception; theoretical subordination of wife to husband still prevails. — Equality of husband and wife proved by (1) correct interpretation of Scripture: record of creation and fall in Genesis, teachings of Christ and of Paul; (2) justice: wife's contribution to maintenance of all interests of the family as great as the husband's; (3) expediency: welfare of husband, wife, and society thus fostered. — Equal authority develops in woman sense of responsibility correspondent with her power; present perils. — Objection: double headship a monstrosity; functions and capacities determine duties. — Independency in certain personal interests. — Relations of parents and children: children belong to both parents; may demand of parents the right of being well born, and the best possible training. — Children owe to parents obedience and confidence.

No more difficult and delicate question presents itself in connection with our study than the determination of the relations between the different members of the family. What are the rights, privileges, and duties of the husband, the wife, the father, the mother, and the child? The first and most important relation is that of husband and wife. Throughout the history of the world, in ancient times and under the Christian dispensation, the recognized relation between husband and wife has been that of superior and subordinate. The man has been the head, the *dignior persona*, the ruler of the family, and the woman has acted under his orders. He has been captain; she at best lieutenant,

more often his servant. Under Roman law the husband held her life in his hand; and by the old law of England he might castigate her for certain offences. To this right the men of the lower classes of the English people still fondly cling.

The idea of equality between the husband and wife is a product of the thinking of the last century. It is the direct outgrowth of the principles of the Protestant Reformation, which have relaid the foundations of not a few of our social structures. The truth of this idea is admitted by comparatively few persons in theory, but in practice it is almost universally recognized. That a wife owes obedience to her husband, is a proposition upheld by the law, by the church, and very generally by society; but the man who should attempt to put in practice the theory by compelling, or even demanding, obedience, would find little sympathy; while the wife who refused obedience would probably be fully sustained by society, if not by the courts. While preserving the form of the time-honored belief in wifely subjection, the substance has passed away, and to this fact may be traced a large part of the present chaotic state of the family.

The question at once confronts us, Should society attempt to restore the supremacy of man, or should it seek to adjust itself to the change in public opinion, and rebuild the fabric of the family upon the complete equality of the husband and wife in the domestic relations? That the proper relation of the husband and wife in the family is one of equality: equal rights, equal duties, and equal authority, and not of subjection, the one to the other, is vindicated, we believe, (1) by a true interpretation of the Scriptures, (2) by the dictates of justice, (3) by expediency.

of the aged, and of the helpless poor, represent duties which can be far more effectively performed in the small *imperium* of the family than in the large *imperium* of the State. It is in the family, also, that those moral qualities, as courage, justice, and prudence, which are essential to the preservation of the State, may be most carefully and completely trained. If Rome had maintained the early strength and purity of her domestic institutions, she might have remained the mistress of

fancies regulated by law; and the execution of the law would be rendered impossible, owing to the uncertainty of the cases in which marriage was to be forbidden. Nor is there any reason to suppose that marriages are to any great extent influenced by considerations of this sort, which seem too distant to be able to make any head against the irresistible impulse of individual attachment. Lastly, no one can have observed the first rising flood of the passions in youth, the difficulty of regulating them, and the effects on the whole mind and nature which follow from them, the stimulus which the mere imagination gives to them, without feeling that there is something unsatisfactory in our method of treating them. That the most important influence on human life should be wholly left to chance or shrouded in mystery, and, instead of being disciplined or understood, should be required to conform only to an external standard of propriety, cannot be regarded by the philosopher as a safe or satisfactory condition of human things. Nor is Plato wrong in asserting that family attachments may interfere with higher aims. If there have been those who 'to party gave up what was meant for mankind,' there have certainly been those who to family gave up what was meant for mankind or for their country. The cares of children, the necessity of procuring money for their support, the flatteries of the rich by the poor, the exclusiveness of caste, the pride of birth or wealth, the tendency of family life to divert men from the pursuit of the ideal or the heroic, are as lowering in our own age as in that of Plato. And if we prefer to look at the gentle influences of home, the development of the affections, the amenities of society, the devotion of one member of a family for the good of the others, which form one side of the picture, we must not quarrel with him, or, perhaps, ought rather to be grateful to him, for having presented to us the reverse. Without attempting to defend Plato on grounds of morality, we may allow that his conception of the relation of the sexes takes rank among the great original thoughts of mankind." — *Jowett's Plato, Introduction to the Republic*, vol. ii., 130-132.

the world. Whatever may be the political form of government of any modern State, if it is training its families in the cardinal virtues, its beneficent continuance is well assured.

Marriage and the family hold an important relation to the State by reason of the fact that marriage is a status. It is usually agreed that marriage is more than a civil contract. It is not simply an agreement between a man and a woman to become husband and wife. It is an entrance also into a relationship to the State different from that formerly held. It has changed the legal position of each in and in respect to the rest of the community. It is thus a status, and, "in this view," as remarks Justice Story, "it has some peculiarities in its nature, character, operation, and extent of obligation, different from what belongs to ordinary contracts."*

Likewise, Fraser, holding that marriage is a contract, yet affirms that, "unlike other contracts, it is one instituted by God himself, and has its foundation in the law of nature. It is the parent, not the child, of civil society."† The institution of marriage and of the family and the institution of civil society thus act and re-act on each other. The intimate relation of these two institutions, writers are liable to overlook. Milton, in his writings regarding divorce, committed the fundamental error, in an argument which is in other respects masterly, of confining his attention to marriage as a simple contract and to divorce as a simple dissolution of this contract. Marriage is far more than a contract, and it forms relations which no contract, as such, can create, and which no dissolution of the contract can annul. In every marriage the State may be said to be

* Story, *Conflict of Laws*, § 108 n.

† Fraser, *Domestic Relations*, I., 87.

one of the parties, and in every divorce it has an interest. Perhaps the most important element in marriage is not the relation of the contract to the parties themselves, but its relation to the State; and certainly the effect of divorce upon society is more important than its effect upon the parties themselves. The family and marriage form the best basis of social order; and whatever has influence over them also has influence most potent over civil society.

If the aim of marriage on its legal side is to regulate the sexual impulse, and to provide the best basis for social order, its aim on what may be called the personal side is even more comprehensive. Its design in this respect seems to be the fulfilment of the ends of those who enter into it. The nature of those ends in an individual case may be very different from what they are in general, on the basis of a correct theory of marriage. Perhaps the most comprehensive end of life is the possession of the noblest personality. This aim marriage tends to win. But its method is simply the Christian method of saving life by losing it. For the essence of marriage is the surrender of personality; it is the surrender of self to another. But in and by this surrender each receives back the other, who has been thus enriched by the sacrifice. They are, indeed, "no more twain." The personality of each is ennobled and enlarged by the personality of the other.

It is also worthy of remark that the family appears to be a type of the divine government. The family and the domestic relationships interpret those names by which God makes himself known to man. Power and obedience, reciprocal love, mutual rights and duties, as existing in the divine government in its relation to man, are made intelligible by the corresponding qualities

prevailing in the human family. In its narrowest, as well as in its broadest sense, the family is the medium of a divine revelation. Into a family was Christ born, in a family Christ lived; from the family, also, we receive those conceptions of God, as Father, Brother, and Friend, which we believe most truly represent his character.

In summing up, then, the more important elements in marriage, it may be said that marriage is the union of one man and one woman, which, having its natural basis in the sexual instinct, is grounded in an exclusive affection of each for the other. Thus established, it has for its aim, on the divine side, the continuance of the race, the protection and education of children, and the development of the character of each; and having, on its human side, for its legal aim, the regulation of the sexual impulse, and the furnishing of the best basis for social order, and for its personal aim the fulfilment of the great ends of life of those entering upon it.

Although marriage may be designed for the regulation of the sexual impulse, it is not designed for the gratification of that impulse. The account of the creation contains no intimation that marriage was established in order to indulge carnal desire. The remarks of Christ relative to the institution are free from any suggestion of this nature. Paul's treatment of the theme, as seen in 1 Cor., vii, allows the inference that regulation and not simple gratification is its purpose. Even if it should be declared that he allows marriage for the lower purpose of the satisfaction of the sexual appetite, it is to be remembered that he was trying to bring within the bounds of decency the most licentious community of the ancient world. The Bible furnishes no foundation for the conclusion that

sensual gratification is an aim of marriage. It is remarkable that as yet no attempt has been made to apply the fundamental principles of Christianity to the regulation of the sexual relation in marriage. Powerful as these principles have been in forming and maintaining a chaste life among the unmarried, thus far the central doctrine of the Christian religion, that the lower nature must be made subservient to the higher, has not been brought to bear with any degree of force upon men and women in the marriage relation.

While we cannot admit, therefore, that sexual gratification enters into the purpose of a true marriage, it is nevertheless true that it forms an element of marriage, and a most important element. The rightfulness of its indulgence depends upon the higher considerations to which allusion has been made. When, as a result of its satisfaction, a human being may be called into existence under other than the most favorable conditions, this satisfaction constitutes a wrong. Every child has the right of being well born. It is the duty of parents to make the pre-natal conditions of their child the most favorable to the development of a strong body and mind. To allow a physical appetite to overthrow these conditions is a sin. Furthermore, if this gratification tends to dethrone the spiritual element and aim of marriage, it is also a wrong. The lower factor should not be permitted to degrade the higher. Sexual gratification should be invariably subjected to the great aims of the well-being of children and of the development of character. The precise degree of its proper subordination is a question which is rather physiological than philosophical; but the scope of this chapter allows the remark that the peril is potent lest the constant gratification should tend to

deprave the high and just aims of the institution of marriage.

Outside of the bonds of wedlock sexual intercourse is a sin against the children which may possibly result. Children thus born are branded with shame from the hour of birth. They cannot, usually, receive that training which is their due. This act, therefore, becomes a possible sin against society, which is obliged to care for the human waifs which are thus flung into its bosom. But, moreover, sexual intercourse outside of marriage is a sin against the most sacred laws and principles of humanity. The complete union of heart and life of two individuals has its fitting symbol in their physical union. Sexual intercourse of this sort degrades the symbol into an emblem and element of physical pleasure. What should take place only when heart and life of two persons are closely united does thus take place when the heart and life are separated by celestial diameters. Both parties sin against their own bodies and souls. They literally make beasts of themselves. It also becomes evident from what has been said that marriage is not a commercial partnership. Its aims and factors are far removed from the pecuniary. As an institution either human or divine, it is founded upon another basis than that of a commercial relation.

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tendencies. The individual is a radical, and progressive. The Conservative party in English politics is composed mainly of those who have strong affiliations with their families. The Liberal party is in great part made up of those who emphasize the importance of the individual in public life. In the United States, therefore, with its special need of conservative influences, is the demand serious for a return to the family as the social unit.

Any movement, therefore, to restore the family to its high place, both for the sake of the good influences of which it is the parent, and for the sake of repressing an undue and perilous individualism, is of great importance. Such an attempt can be made only by means of general measures. It cannot be the direct product of civil law. Civil law recognizes only individuals. Its penalties are visited on individuals only. The American Constitution forbids such penalties, not uncommon in English procedure, as attainder and corruption of blood. By general methods must the restoration be made.

Every member of the household should be impressed in every possible way with the importance of the family. Each finds himself, at his first consciousness, a member of a family. The birth is the birth into a home. As a member of a home should he feel it his duty, as well as his privilege, to remain. The husband and father should learn that the demands of his family are of an urgency equal to the demands of business. He should constantly recognize himself as the "house-band" which unites the body into an organic whole. The wife and mother should be impressed with the dignity of her position. The children should feel the ties of home as stronger links than all other associations. The basis of

the family as a trust should receive stronger emphasis. The family is founded upon a confidence of each member in every other. Whatever measure may serve to strengthen this confidence should be fostered.

It were also of advantage to the influence of the family as a social institution if the present drift of population from the country to the city should come to an end. This drift is an acknowledged fact.* Urban life, through its variety and intensity of interests, tends to develop individualism; rural life, each home removed from its neighbor, tends to develop the family. The struggle for wealth, the appetite for excitement, the opportunity for the satisfaction and development of personal taste, of the metropolis, tend to develop individualism; the calm, the conservatism, and the simplicity of the country tend to develop the family. In time, the tide of population, which now sets so strongly toward the city, will turn, and will here, as in England, run toward the country. This change cannot but have a healthful influence upon the family as the centre of social and legal order.

* In 1790, of every 100 persons in the United States, 3.3 lived in cities; in 1810, 4.9; in 1820, 4.9; in 1830, 6.7; in 1840, 8.5; in 1850, 12.5; in 1860, 16.1; in 1870, 20.9; in 1880, 22.5. (Compendium of the Tenth Census, p. 8.)

CHAPTER VIII.

THE FAMILY AND ITS INDIVIDUAL MEMBERS.

Difficulty of the question of the relations of the members of the same family. — The relation of husband and wife formerly one of superiority and subordination, at present one of practical equality; origin of this conception; theoretical subordination of wife to husband still prevails. — Equality of husband and wife proved by (1) correct interpretation of Scripture: record of creation and fall in Genesis, teachings of Christ and of Paul; (2) justice: wife's contribution to maintenance of all interests of the family as great as the husband's; (3) expediency: welfare of husband, wife, and society thus fostered. — Equal authority develops in woman sense of responsibility correspondent with her power; present perils. — Objection: double headship a monstrosity; functions and capacities determine duties. — Independence in certain personal interests. — Relations of parents and children: children belong to both parents; may demand of parents the right of being well born, and the best possible training. — Children owe to parents obedience and confidence.

No more difficult and delicate question presents itself in connection with our study than the determination of the relations between the different members of the family. What are the rights, privileges, and duties of the husband, the wife, the father, the mother, and the child? The first and most important relation is that of husband and wife. Throughout the history of the world, in ancient times and under the Christian dispensation, the recognized relation between husband and wife has been that of superior and subordinate. The man has been the head, the *dignior persona*, the ruler of the family, and the woman has acted under his orders. He has been captain; she at best lieutenant,

more often his servant. Under Roman law the husband held her life in his hand; and by the old law of England he might castigate her for certain offences. To this right the men of the lower classes of the English people still fondly cling.

The idea of equality between the husband and wife is a product of the thinking of the last century. It is the direct outgrowth of the principles of the Protestant Reformation, which have relaid the foundations of not a few of our social structures. The truth of this idea is admitted by comparatively few persons in theory, but in practice it is almost universally recognized. That a wife owes obedience to her husband, is a proposition upheld by the law, by the church, and very generally by society; but the man who should attempt to put in practice the theory by compelling, or even demanding, obedience, would find little sympathy; while the wife who refused obedience would probably be fully sustained by society, if not by the courts. While preserving the form of the time-honored belief in wifely subjection, the substance has passed away, and to this fact may be traced a large part of the present chaotic state of the family.

The question at once confronts us, Should society attempt to restore the supremacy of man, or should it seek to adjust itself to the change in public opinion, and rebuild the fabric of the family upon the complete equality of the husband and wife in the domestic relations? That the proper relation of the husband and wife in the family is one of equality: equal rights, equal duties, and equal authority, and not of subjection, the one to the other, is vindicated, we believe, (1) by a true interpretation of the Scriptures, (2) by the dictates of justice, (3) by expediency.

Let us examine the teachings of the Bible upon the question.

Two different accounts of the creation are given in Genesis. The first, comprised in the first chapter and the first three verses of the second chapter, is the simple and grand recital of the events of the seven days of the material creation. In this narrative the creation of man is represented as the final and crowning work of the Creator. "And God said, 'Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth.' So God created man in his own image, in the image of God created he him; male and female created he them. And God blessed them, and God said unto them, 'Be fruitful and multiply, and replenish the earth and subdue it; and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth.' " *

The plain inference from these words is that man and woman were created at the same time as the joint rulers over the lower creatures, equal in powers and privileges. No hint is expressed that the one was subordinate to the other. This view is further borne out in Gen., v., 1, 2, where it is said, as a preface to the generations of Adam, that, "in the day that God created man, in the likeness of God made he him; male and female created he them; and blessed them, and called their name Adam in the day when they were created." Christ also quotes this passage: "Have ye not read," he says to the Pharisees, "that He which

* Gen., i., 26, 27, 28.

made them at the beginning made them male and female?"*

In the second record of the creation, which begins with the fourth verse of the second chapter of Genesis, and finishes with the account of the Fall, we find a different history of the order of the creation. In it God is represented not merely as a physical creator, but as a moral ruler as well. The style is not the chaste and simple language of the first chapter, but is minute, and in places plainly metaphorical. The manner in which man was created is recited: "And the Lord God formed man of the dust of the ground, and breathed into his nostrils the breath of life; and man became a living soul." He is set in a beautiful garden, which is fully described; the tree of knowledge is before him, and in the midst of a new creation he is placed as lord to dress the garden and to keep it. But God saw that it was not good for man to be alone, and he determined to make a helpmeet for him. A deep sleep fell upon Adam, and God took a bone from his side and by a special act of creation formed woman. "Therefore shall a man leave his father and mother, and cleave to his wife, and they shall be one flesh."† This account of the creation of man and woman seems to be given not as an exact narrative of the physical process, but as a type of the moral relationship between them. In a poetic form it teaches the incompleteness of man without woman, the dependence of the woman upon the man, and the entire oneness of them and of their interests. As in the former history of the creation, no suggestion is made of the subordination of one to the other.

The record of the Fall, which continues the moral his-

* Matt., xix., 4.

† Gen., ii., 24.

tory of man, relates the temptation of Adam and Eve, and their sin. Any attempt to prove from it the moral superiority of the man to the woman is idle. Admitting the narrative to be literally true, if the woman was the first to sin, it was in consequence of a much stronger temptation than that which tried the man. The prophecy of woe to the guilty partners, carried to each a peculiar curse. It was foretold to the woman that her desire should be to her husband, and he should rule over her, a clear proof that no such subordination was established at the creation, but that it is one result of the introduction of sin into the world. When Christ was called upon to define the relation of the sexes, he went back to the beginning, and re-established the original order as the order under the dispensation of grace: "And they twain shall be one flesh: so then they are no more twain, but one flesh." * It may further be said that in all the relations which Jesus had to women, as son, as brother, as friend, as teacher, there is not a word or an act to signify that he regarded woman as subordinate to man. He even sets aside the common usages of society, to show not only his sympathy and respect for her, but also his appreciation of her moral and intellectual character. His most philosophical address, with the exception of the conversation with Nicodemus, was made to a single woman, and his words were understood and appreciated by her better than by the learned rabbi.

The utterances of the Apostle Paul upon this subject are direct and clear. He speaks with no uncertain sound. To the Corinthians, to the Ephesians, to the Colossians, and to Timothy, he gives specific rules regarding the subordination of the wife to the hus-

* Mark, x., 8.

band. How are we to regard them? No candid reader of the epistles can avoid the conviction that Paul believed woman to be inferior to man, and that her place in the family was one of subjection to him. It is not a sufficient answer to say that the directions he gave to women were local and special, and binding only on those to whom they were addressed. He lays a foundation for his opinions in the teachings of nature. His belief rests upon a triangular base, whose three corner-stones are the priority of the creation of man,* the fact that the woman, not the man, was deceived in the first transgression,† and the fact that in the creation woman was made for man, and not man for the woman.‡ The argument is further re-enforced by an analogy drawn from the immutable relation between Christ and his Church.§ The great body of Christian writers have regarded these statements of Paul as decisive, and have drawn from them the doctrines which have prevailed throughout the history of the Church. The question may therefore be fittingly asked, Are these utterances the expression of the human judgment of a divinely inspired man, or are they divine utterances made through a human medium?

Upon the answer to this question must largely depend the place of woman in the Christian family. We have no hesitation in saying we believe that in the statements of Paul regarding the position of woman, he expresses his own opinions, wise far beyond the age in which he lived, enlightened to a degree by divine illumination, and yet colored by the prejudices of his time. These opinions, if not opposed to the spirit of the Gospel, are at least below

* 1 Tim., ii., 13.

† 1 Cor., xi., 9.

† 1 Tim., ii., 14.

§ Eph., v., 23.

its level. They are also inferior to the grand and catholic principles which Paul himself lays down when he says, "There is neither Jew nor Greek, there is neither bond nor free, there is neither male nor female; for ye are all one in Christ Jesus."* His wise and Christian spirit also leads him to act in contradiction to his own precepts, when expediency demands. He appoints Phœbe deaconess of the church at Cenchrea. He permits Priscilla, the wife of a humble tent-maker, to become the teacher of Apollos, the most learned and eloquent man of the time. He founds the first church in Europe upon a few devout women, and labors with them heartily in the Lord.†

It must be admitted that if one holds to the literal, verbal inspiration of the Scriptures, he is forced to believe in the moral and intellectual inferiority of woman, and in her subordination to her husband in the marriage relation, as he must also believe that the Declaration of Independence and the resistance of the Fugitive Slave Law were contrary to Biblical precepts. It is the glory of Christianity that it came neither to destroy existing laws and institutions, nor to stereotype them, but to fulfil them, by moulding them with its spirit into new and living forms. Thus it is that where Christianity has reigned, there also has social progress reigned.

The principles of justice also lead us to give to the wife an authority equal to that of the husband. The subordination of the woman to the man in the marriage relation is the only example remaining among Anglo-Saxon peoples of the subjection of one individual of full mental powers to another, on account of an accident of birth. In the beginning, this subordination

* Gal., iii., 28.

† Phil., iv., 3.

was based upon the right of the strongest, as were slavery, feudalism, and absolute monarchy. In rude and barbarous times, it was, perhaps, fitting that woman should be under the protection, and, to a degree, the authority, of those men who were able and willing to protect her against such men as found in her weakness and sex a temptation to their passions. Such reasons can no longer be urged for the continuance of this authority. Nowhere in civilized lands is brute force now recognized as the basis of personal power. As marriages exist to-day, the average woman is at least the equal of her husband in mental power and attainments; her judgment is as trustworthy as his, and should have equal weight in the decision of such matters as affect the well-being of the family.

Furthermore, the contribution which the wife makes to the family is equal to that of the husband. She gives her time, her strength, her labor; and the sacrifices of personal ambitions and pleasures which she makes are far greater than his. The interests of the family are hers as truly as they are his. By no principle of justice can an equal voice be denied her in all family councils; much less can she be personally subordinated to him.

On the side of expediency the arguments are important and should be heeded. Both for the sake of the husband and the wife, and for the sake of society, it is expedient that the man and woman share the headship of the family. Authority in the man intensifies those qualities of character which he most needs to repress. Subordination in the woman represses those characteristics which she most needs to cultivate. The man is by nature positive, imperious, forceful. The woman is by nature timid, confiding, self-distrustful. Many see in these natural characteristics a strong argument that

the Creator designed man for the superior and woman for the subordinate. The argument from these facts rather tends to a contrary conclusion. Positiveness, imperiousness, and force, being the natural qualities of the man, do not need to be nourished by the unlimited opportunity for their exercise. They are essentially unlovely traits of human character, and should be carefully repressed, as are coarseness and brutality and lust, which are also the peculiar natural characteristics of man. Timidity and self-distrust are also undesirable characteristics. They are weak rather than lovely. They are nourished by the life of subordination to which society has condemned women; while the virtues of courage, of self-respect, and of self-reliance, which women surely need to cultivate, are thus systematically repressed.

In order to form the truest and noblest character, husband and wife should meet on a level where each recognizes the complete individuality of the other and the right of each to rule and the duty of each to obey.

It is, moreover, expedient for society as well as for the husband and wife that the equality of the man and woman in the marriage relation be established. We have reached a point in social progress where marriage is only one of many occupations open to women. Alarmists are crying out that women are averse to marriage, while in the same breath they affirm marriage is her only natural calling. The difficulty must be most serious when a natural occupation is passed by for one that is unnatural. If there be any ground for the fear, as there seems to be, that the best educated and the most talented women are coming to prefer some other occupation to their natural occupation of housekeeping and motherhood, the problem should be

carefully examined. With our present social customs, women can no longer be forced into marriage through a lack of occupation. Marriage as an occupation is in competition with hundreds of other employments. With nature on its side, it ought to win. It will not win with the best women, however, unless the wife is fully recognized by law, by society, and by her husband, as an equal partner in a firm to which she brings as much capital as he.

It has already been pointed out that women wield vast power in the family. While promising at the sacred altar to obey, they shrug their shoulders with a careless laugh at the possibility of ever being asked to fulfil their promise. The power which woman wields is conceded to her as a compliment, as an act of chivalry, and not as a right. When it is conceded as a right, she will be held accountable for its exercise, and duties commensurate with her authority will be demanded of her. Women now have more rights than society holds them responsible for using. They have a right to their earnings and property, but have no duties to discharge in providing for themselves or their children. History shows that women who possess power without the responsibility of power are a dangerous class. A comparison between the mistresses of kings and queen regnants affords ample evidence of the peril of power unaccompanied by responsibility. Only by the just recognition of their equal rights can they be made to feel the responsibility of these rights. By one of those strange paradoxes so common in society, the idea of the subordination of women, which once made her the drudge and slave of man, now makes her the petted object of his labor and care. She is his, but not to work for him, but to be worked for.

Even language shows the disposition to convert the woman and wife into the lady. We no longer have the housewife. She has been lost in the lady of the house. The establishment of the wife as an equal, and not a subordinate in the family, will lay upon her duties commensurate with those which society demands of the man. The woman whose husband labors will not expect to be supported without labor. The large (and increasingly large) class of wives, childless, and with no home but a boarding-house, who contribute nothing of material, intellectual, or moral wealth either to society or the family, will be forced by public opinion to justify their existence. For society, therefore, it is expedient to recognize the equal authority and equal responsibility of husband and wife.

The common objection urged against the equal authority of the man and woman in the marriage relation is based upon the belief that in the family there must be one supreme and ultimate authority. A double headship is a monstrosity. One only can decide, and that one is more fittingly the man. To this it may well be answered that, however true it is that the final decision of a mooted question can rest only on one, it by no means follows that the same one should decide all questions. The central idea of a true wedlock is the idea of mutual self-surrender. Rights, duties, and privileges are reciprocal. Neither the husband nor wife should demand more than the other can give, nor consent constantly to give without receiving in return. Both should maintain their self-respect, as both should avoid a tyrannical use of power.

Two classes of questions arise in a family: those that are personal to either the husband or the wife, and those that affect both equally. In affairs which are

common to both, experience must decide to whom the decision may be more safely committed. Doubtless, in affairs regarding the relation of the family to the outside world, the peculiar training of the man fits him to be the safer guide. But in domestic concerns, such as the selection and furnishing of the house, the oversight of servants, the training of the children, the house-mother is the natural leader.

Children belong naturally to both parents, and both parents should have by law an equal right to them and their earnings. No more unrighteous law disgraces the statute book than that which gives to the father the sole ownership of children, sole control of their earnings, and sole inheritance in their property. In many of the United States, until within a few years, a father might by will dispose of the person of even an unborn child. This law has been changed in several States, where its enforcement proved its iniquity; but the power of binding out a child, be it son or daughter, still rests with the father alone.

In matters private and personal, each must at the outset of married life recognize the complete freedom of the other. The only right to be maintained is the right of the one to yield a personal desire for the sake of the happiness of the other. Neither should expect to dictate as to what friends the other may visit, what habits he may indulge, what private expenses he may incur.

This, it need hardly be said, is not according to the present law. The husband as the head of the household has the right to dictate the policy of the family. The wife is expected to conform to his habits, tastes, even to his eccentricities, provided her health be not seriously endangered by so doing.* The husband may

* Schouler's Domestic Relations, § 47.

even restrict his wife's calling list, or forbid her from visiting her relations. The courts also sustain him in preventing her from attending the church of which she is a member.*

This personal liberty should extend to the control of property, and, above all else, it should insure to both the ownership and control of one's own person. By the canon law the wife was allowed the control of her own body at certain times, as during pregnancy. But modern law and modern opinion seem practically to accord to the husband the ownership of his wife's person at all times, provided he does not wantonly abuse her.† No belief tends so surely to the degradation of the marriage relation; and before society can hope to see a regeneration in family life, this remnant of savagery must disappear. Man should know that it is the deepest profanation of the holiest of relations for either husband or wife to be compelled, or even expected, to render himself or herself an unwilling instrument for the gratification of the animal passions of the other. Whatever is sacred in marriage communion is blasphemed when one of the parties is but the victim of the other's lust. In its effects on the individual it is hardly better than legalized prostitution.

Having thus considered the rights of the husband and wife, we turn to discuss briefly the rights of the children as a part of the organic family. What has the child a right to demand of the parent? What has the parent a right to demand of the child? Every child has as his first right the right of being well born. He may justly demand of his parents that he be brought into the world under such conditions as are

* *Lawrence vs. Lawrence*, Paige's Reports, iii., 267.

† Schouler's Domestic Relations, § 36.

best fitted to give him physical and moral strength. This truth ought to be self-evident; yet the fear that this obvious right of the child is almost totally neglected by even those whom we call the best parents, is the excuse for its present statement. Every parent who dares to take upon himself the awful responsibility of calling a human life into being, who places himself in God's hand as the instrument of divine creative power, assumes a trust which should exclude every form of selfishness. She who lends herself as the shrine of a newly wakened soul, whose life has become overshadowed by the Most High, is no longer her own. The life which she bears within her own has the first right to her thought and care. A child can be no more foully wronged than to be conceived in a moment of thoughtless indulgence, borne in a spirit of undisguised rebellion or nameless dread, and brought forth in heaviness of soul.

Beyond the right of being well born, every child has also a right to the best training his parents can give. He has the right to the personal care of both father and mother, a care which can never be delegated to others without serious loss to both parent and child. The sympathy and love existing between the father and child is quite different from that existing between the mother and child. To lose either the one or the other is to take from the life of the boy or girl an element of power which nothing can replace. In our modern city life, the home too often becomes the lodging-house of the father and the commercial or social headquarters of the mother. The child loses that intimate association with his parents which is the natural means for developing his character, and his surest safeguard against temptation. To be fed and clothed are among the minor

rights which children may demand of parents. It is their right to learn from their parents, both by precept and example, those principles of truth, of honor, of personal purity in thought and life, which are a heritage of incalculable worth. Such instruction can be left to no teacher, however faithful; to no religious guide, however devoted. The parent owes it to the child, for whose existence he is responsible.

In considering the relation of the parent and child, and emphasizing the toil and the self-sacrifice which the faithful father and mother cheerfully give to their children, one may easily exaggerate the duties which the child owes the parent. However great and important these duties, it cannot be overlooked that the parent owes far more to the child than the child to the parent. The duties of children may be briefly comprehended in obedience and confidence. Every father and mother have not only the right to claim obedience from their children; it is, moreover, their duty to enforce it. Submission to higher powers is the only basis for strong and free manhood and womanhood. The restraints of law, civil and divine, bear heavily only on those who, undisciplined by early parental restraint, have never learned obedience to righteous law. For the sake of the child, no less than for his own, the parent should demand prompt and implicit obedience. He should likewise expect to receive the confidence of his children in all that concerns them. Absolute truthfulness, with no evasion, no prevarication, no concealment; a trust of each in the other, born of the sympathy of the parent with the child and the love of the child for the parent, — this is the ideal in the relation of the boy or the girl to those who stand in the place of God himself.

CHAPTER IX.

THE FAMILY AND PROPERTY.

State of transition as to the holding of the property of the family by its members. — The common law vests wife's personal property in husband. — Present tendency toward equality of husband and wife as to holding of property; causes in England and United States. — "Married women's acts." — The law of New York and Pennsylvania of 1848. — General principle of statutes as to relationship of husband and wife in ownership. — Property rights of children. — Diversity of laws as to property rights of members of family. — Suggestions as to improved methods: (1) abolition of dower and curtesy, as in Indiana; (2) marriage settlements; (3) rights and duties of probate court.

It is evident that the family is in certain respects in a state of transition. This state is in no way made more prominent than in the legal relation of the members of the family to the holding of property. The principles of the common law are modified by the decisions of equity courts, and both these principles and these decisions are set aside by the provisions of statutes.

Under the old common law all the personal property of a wife belongs to her husband. So rigorous is the law that though he be living apart from her and in open adultery, he acquires the property which she gains by either labor or bequest. The earnings of the wife, all the fruits of her industry, belong to the husband. Without her consent, he may dispose of all her personal property, selling it and retaining the proceeds, or bequeathing it by his will. In the real property of

his wife, the husband's interest is, according to the common law, less than in her personal estate. Marriage entitles him to the income of the real property, and it may entitle him to the right of its use after her death and throughout his own life, but it does not vest absolute ownership in him. He at most receives only the beneficial enjoyment of her real property. Marriage only suspends, however, her full rights. The inheritance belongs to her heirs.*

But within the last hundred years these provisions of the common law, so severe as regards the property of the wife, have been either greatly modified or entirely abrogated. In England and the United States the tendency in both court and legislature has been to equalize the condition of husband and of wife in respect to the holding of property. The Saxon love of justice and of individual liberty, the liberal spirit of civilization, the determination of judges to interpret the law, so far as possible, according to existing needs, and the purpose of legislators to adapt the law to these needs, have resulted in extending the property rights of married women. This extension is due in the first instance to the decisions in equity of the English chancery courts. The doctrine of the statutes is of later origin and has chiefly represented the liberal tendency in the United States.

The origin of the belief that it is expedient for a wife to be able to hold property separate from her husband, dates back about one hundred years. It arose in the belief that it was wise "for the interests of society that means should exist by which, upon marriage,

* These and other important legal considerations are fully explicated in Schouler's *Domestic Relations*, pp. 122-288. To this treatise I am indebted for many and valuable suggestions.

either the parties themselves by contract, or those who intended to give bounty to a family, might secure property without that property being subject to the control of the husband." * The principles in equity so modified the principles of the common law that it was settled that the wife's estate might be kept separate from her husband's, and that the law would regard and protect it. Such justices as Nottingham, Somers, Cowper, Hardwicke, and Thurlow succeeded, without any help from the legislature, in establishing the equity principle of the wife's separate estate.

In the United States the common law respecting the ownership of property prevailed till the first years of the present century. In New England and in the Western States, as Ohio, Indiana, Illinois, the married woman was not regarded as the independent owner of personal property. New York, with such eminent jurists as Walworth and Kent, built up an equity system of separate use, and Pennsylvania and New Jersey adopted a similar doctrine. In the Southern States, in which a disposition to family entails and marriage settlements was specially prevalent, the English equity decisions relative to separate estate had much influence. It was not, however, till the middle of the present century that the local legislatures came to consider the subject. At once statutes were passed which in certain respects created nothing less than a social revolution. The causes of this movement lay in the general changes through which the American nation was passing. The extension of public education, the growth of independence in life and manners, the increase of an equality of social intercourse of men and women, contributed to the movement. Maine and

* Schouler, *Domestic Relations*, pp. 156, 157.

Massachusetts were among the earliest States to pass "married women's acts"; but previous to 1850 commonwealths so diverse and remote as New Hampshire, Tennessee, Vermont, Kentucky, and Michigan enacted similar laws. In 1848 New York passed the most general and sweeping law which had up to that time been enacted. Entitled "for the more effectual protection of married women," it provided that "the real and personal property of any female already married, or who may hereafter marry, which she shall own at the time of marriage, and the rents, issues, and profits thereof, shall not be subject to the disposal of her husband, nor be liable for his debts, and shall continue her sole and separate property as if she were a single female; and that any married female may lawfully receive and hold property in like manner from any person other than her husband, whether by gift, grant, devise, or bequest."* In the same year of 1848, and only four days later (11th April) Pennsylvania passed a similar law. From that time till the present the legislatures of the States have added to their statutes many acts granting rights to married women relative to the holding of property. Her legal status has thus been vastly enlarged; and the process still continues. Not only do the courts allow the wife a right to the earnings of her labor, but also the right to carry on business separate from her husband, and for her own individual benefit. Both equity and statute permit transactions between husband and wife which under the common law were not only unknown, but even impossible.

The general principle of the relation of husband and wife in respect to property is that marriage confers

* Schouler, *Domestic Relations*, pp. 171, 172.

upon each certain rights in the property of the other, but these rights do not take full effect till the death of one of the parties. In those States in which the laws are the more generous toward women, these rights are that each has, after the other's death, one-third of the personal property, and a life-interest in one-third of the real estate. In case there are no children, the life-interest is increased to one-half.*

The rights which children have in the property of their parents do not take effect till after the death of either the father or the mother. These rights are strongly intrenched in the laws and sentiments of both the English-speaking peoples. Primogeniture still holds its place unbroken in England, by which the eldest son is so far preferred to the other children as to

* While the law of dower has been gradually fading out of sight in England since the English Dower Act, 3 & 4 Will. IV., c. 105, it has attained its fuller development in this country. "Curiously enough, most of the modern cases on this subject are American. Our local statutes have very generally favored the widow's rights, and unless she has joined her husband in his conveyances during his life, or statutes restrain her rights, she may usually assert the privilege at his death. But dower is found a great inconvenience in an age when real estate passes from hand to hand as an article of commercial traffic; and legislatures show some disposition to get rid of it entirely together with curtesy. In New York the widow can only claim her dower out of lands of which her husband died seized; and such is the rule of various other States as to equitable estates at least, like an equity of redemption. In several States her interest is treated as something for the benefit of herself and children jointly. In others the 'thirds' are dispensed with, and a different rate is fixed. And, finally, the State of Indiana has set a good example, which other States have followed, of abolishing both curtesy and dower, and substituting, in behalf of husband and wife, an interest in fee in one another's real estate, remaining at decease, on principles analogous to the descent and distribution of personal property of intestates; thus placing both sexes on the mutual footing of justice, and treating lands and personal estate as subject to corresponding rules." — Schouler, *Domestic Relations*, n., p. 287.

inherit all the real estate of his parent. In the United States, the children inherit by equal shares. The general rule is that they take all the real property, subject to the life-interest of the surviving parent, and two-thirds of the personal property.

The action of legislative bodies relative to the holding of property in the family has not been founded upon broad principles of jurisprudence nor been regulated by an always consistent purpose. The departures from the common law have usually been necessitated by cases of immediate and pressing injustice; and the resulting series of statutes presents a heterogeneous mass of special provisions. Even if a single commonwealth has carved out its legislation with a tolerable degree of consistency, the legislation of the different commonwealths manifests the most marked diversities. The reasons of these variations are not deeply hidden. Legislation regarding the holding of property in the family is rendered specially difficult by the many and conflicting interests of the family. The interests of the family in which the husband was a son and a brother, may be opposed to the interests of the family in which the wife was a daughter and a sister. But particularly do second marriages render legislation difficult. Instead of restoring, second marriages usually succeed in impairing, the unity of the family. Two groups of children, and of relations, with antagonistic interests, are introduced. It is estimated that about one-third of those men who marry at all marry more than once. For such a contingency as re-marriage, legislation should, in respect to the family holding of property, have regard; yet legislation cannot be adjusted to the many and diverse cases which constantly occur.

At the peril of seeming presumptuous, we venture to suggest a few considerations as to the better ways of owning property in the family.

In the first place, we are constrained to believe that the abolition of dower and of curtesy would prove of advantage. In Indiana, and a few other States, these rights of the wife and of the husband have been displaced by an absolute ownership in the real property remaining at decease. A similar change in the legislation of each State would be of service. The right of dower is of small worth in many instances in which it should be of the most value. Particularly is this the truth in the case of property in a farm. The wife in a family occupying a farm works hard and earns much; and her rights of dower as a widow do not at all represent her earnings. Ownership in part would be more commensurate with her dues; and ownership would not wrong others in whom claims might be vested.

Along this same line, we again remark that the property rights of husband and of wife should be regarded as equal: that is, the wife should have the same interests in her husband's estate that the husband has in his wife's estate. They should be treated as peers. Promissory notes made by either in favor of the other should be held valid. What should be the degree of interest that each should have in the property of the other, it is difficult to say: one-third or one-half might, in general, represent a fair proposition. Whatever may be the legal requirement, injustice will not be invariably avoided. But on the ground of common justice and of mutual and reciprocal rights and duties, the husband and the wife should in respect to ownership in the family estate be treated as equals.

We cannot, furthermore, but believe that the adoption of a custom more prevalent in England than in this country, the making of marriage settlements, would tend to promote the peace and permanence of the family. In many instances it is neither possible nor desirable to make a settlement; but wherever it is possible, it is also desirable. A settlement serves to give to a wife an independence of position which is essential to a fitting unity in the family. It commands and receives respect.

To one more suggestion we venture to call attention. It relates to the probate courts. Before these courts in the course of a generation the large proportion of the property in the United States is brought for settlement. To the justices of these courts great discretionary power is given. In the case of intestate estates, they are permitted to bestow the personal property as they see fit. It is not to be questioned but that they usually exercise these powers with much wisdom. Breaches of trust are infrequent. But possessing so great discretionary powers, every endeavor should be made to maintain the efficiency and purity of these courts. Their officers should be allowed, *in ordine dignitatis*, a higher rank. They should be as permanent in their tenure as are the judges of the Supreme Bench. Under the best conditions it is possible that their already vast discretionary powers might be enlarged, in order to adjust the law to the exigencies of those special cases in which the general statute cannot avail and in which injustice appears the more flagrant.

CHAPTER X.

THE FAMILY AS A SOCIAL INSTITUTION.

Attempts to overthrow the institution of the family. — Plato's imaginary commonwealth. — Campanella's scheme. — The Anabaptists of Münster. — Principles and practices of the Shakers. — Experiments of the Owens. — Fourierism. — The Oneida Community. — Common characteristics of these movements: (1) communistic; (2) claiming to be divinely inspired; (3) abolishing the individual family; (4) resulting in comparative failure. — Causes of failure. — Polygamy of Mormonism. — Objections to anti-family systems. — Celibacy. — Objections of socialists to the family system. — Slight worth of arguments drawn from conception of original nature of man. — Authority of moral intuitions and instincts. — Family conserves interests of helpless members of society. — Most worthy social ideals may be realized in the family. — Teutonic races prone to speculation as to the family.

VARIOUS, diverse, and long-continued, are the attempts made to establish the social fabric upon other foundation than that of the family. These attempts are in certain instances limited to theories; but often, and especially in the last two centuries, they have assumed practical form. With the general aim of these attempts it is easy to feel much sympathy. Whoever is acquainted with the cruel injustice and unjust subordination frequently manifested in the family, whoever sees matters of lasting and supreme importance relative to the beginning and continuance of the family determined by momentary fancy or unreasoning passion, cannot but desire the construction of a social fabric in which reason may rule with perfect justice. The method of achieving the end may excite either

pity, contempt, or abhorrence: but the end itself of the formation of the best order of human society is most worthy.

The imaginary commonwealth of Plato is among the boldest of human conceptions; and the most daring of its provisions relates to the community of wives and children. To the officers of the State, not to individual caprice, is committed the arrangement of the details of domestic life. The State is to be the only parent which the child is to know. It is to be observed that Plato's plan is the very opposite of licentiousness. His purpose is "to make matrimony as holy as possible,"* and the most beneficial marriages are the most holy. The improvement of the human race is his aim, and in its accomplishment he lays down such rules as experience and analogy show to be of worth. Passion and emotion are eliminated. Each effect is the result of express provision. Nothing is left to chance. The arrangements for the betterment of the human stock are made by the cold reason untouched by feeling. The inferior offspring which may find its way to the light is to be destroyed. Only the superior is to be allowed to live. "That the new generation may be better and more useful than their good and useful parents,"† is the confident expectation of the philosopher, and the constant endeavor of the guardians of the public well-being.

For the space of two thousand years no philosophic conception so destructive of the foundations of the individual family was broached. Neither the Utopia of Sir Thomas More nor the New Atlantis of Bacon permits a community of domestic rights and privileges. In both of these ideal commonwealths the laws respect-

* Republic, Book V.

† Ibid.

ing marriage and divorce are strict.* But in 1623, Campanella, one of the most brilliant and unfortunate of the philosophers of the Italian Renaissance, brought forth his ideal system of government. The "City of the Sun" is, in respect to the official authority entrusted to philosophers, to the community of property and of wives, similar to the "Republic" of Plato. The law of family is the root of social disorder. It fomented selfishness, and instigates rebellion. Therefore, the associations of home and of kin are to be destroyed. The control of the increase of population is vested in the government. Campanella is astonished that, while to the improvement of the stock of animals so much attention is paid, so little heed is given to the improvement through natural means of the human race.

The theories of Plato and of Campanella, of social reconstruction, have ever remained theories. But in widely separated epochs and places have attempts been made to regenerate the soul and body of society. The monastic system of Buddhism and of early and mediæval Christianity, and the customs of the Essenes—a Jewish sect, numbering about four thousand members, of the time of Christ—represent local and temporary movements. Their disciples did not propose an entire social revolution. Without endeavoring to propagate their views, they held that for themselves marriage and the family life were not to be desired.

* They "do neither allow of polygamy, nor of divorce, except in the case of adultery or insufferable perverseness; for in these cases the senate dissolves the marriage, and grants the injured person leave to marry again; but the guilty are made infamous, and are never allowed the privilege of a second marriage." *Utopia*, Book II., ch. viii.

"They allow no polygamy. They have ordained that none do intermarry or contract until a month be past from their first interview." *New Atlantis*, on "Marriage Regulations."

But in modern times, and especially among the Gothic nations, have attempts for the reorganization of family life been numerous. As early as the beginning of the Protestant Reformation, the Anabaptists of Münster, under the leadership of Matthys and John of Leyden, proclaimed and practised the right of a community of property and polygamy. It was not, however, till the first years of the present century that the endeavors for an improved social condition began to work in a large field. These endeavors are most diverse and frequently contradictory. Some, as those of Ann Lee and George Rapp, were religious in their aim and motive; others, as those of Owen and Fourier, were essentially infidel in their purpose and organization. Some, as those of the Shakers and Rappites, believed in celibacy, while others practised in varying degrees sexual communism.

The chief dates and events in the history of the attempts made in America to rebuild the social structure are easy to fix. In 1774, the Shakers, under the guidance of their prophetess, Ann Lee, landed on these shores. A religious, communistic, celibate community, they declare that their four principles of belief are "virgin purity," "Christian communism," "confession of sin," and "separation from the world." They claim that "true Christian communism can exist only through the principle of the virgin life. This excludes marriage from Shakerism; that, being a selfish relation, cannot be incorporated with communism, and does not belong to the resurrection order, according to the words of Jesus Christ: 'for in the resurrection, they neither marry nor are given in marriage; but are as the angels of God in heaven' (Matt., 22, 30.) Marriage is not condemned in its order; but that order is

of the earth, earthy, according to the text which reads, 'they twain shall be one flesh'—there is no reference to the spirit in the contract. It belongs to the first Adam, not to the second. Jesus lived the virgin life—left the earthly order to be fulfilled by those who remain on that plane. He is the Shaker exemplar; surely to live as Jesus lived cannot be wrong." * These principles have not succeeded in claiming the adherence of a large number of followers. This number has never exceeded six thousand, and now represents about twenty-five hundred members.

The Owenite and Fourierite movements were quite as bitterly opposed to the Bible and Christianity as Shakerism delighted to summon religion in its defence. Robert Owen, fresh from his reforms in New Lanark, came to America in 1824. Establishing his community of nine hundred persons in Indiana, on the ruins of Rapp's experiments, he succeeded in holding it together for a period of nearly three years. A few other communities were also organized, whose membership was smaller and whose term of existence was even more brief. "Association" and "Harmony" were Owen's watchwords. His work was taken up and carried forward by his son, Robert Dale Owen, and Francis Wright, but it resulted only in failure. The attempt to bring Fourierism into this country met with the same result. Five years after the death of Fourier, his apostle, the brilliant Albert Brisbane, introduced the doctrines of his master to American audiences. This year of 1842 marks what has been called the "Fourier epoch." Between thirty and forty communities were organized, of which about one-half were located in New York, Pennsylvania, and Ohio. These

* Hinds, *American Communities*, pp. 87, 88.

"phalanxes" were, as the communities of Owen, short-lived. Although one or two attained the age of even six years, and "Hopedale" is commonly reported as having existed for seventeen years, the majority survived only a few months.

Warned and instructed by the failure of the reforms of Owen and Fourier, the Oneida Community has lived more than a generation, yet has declined in the recent death of its founder. Its founder, John Humphrey Noyes, moved by the timely revivals of 1830, and converted to the system of Perfectionism, gradually evolved his social theories. Though founded upon a religious basis, these theories were colored by the Fourier excitement, and particularly by the experiment at Brook Farm. Mr. Noyes ventures to assert the claim that "the Oneida Community really issued from a conjunction between the Revivalism of Orthodoxy and the socialism of Unitarianism.*" Of the beginning of the movement which resulted in the formation of the Oneida Community the claim may be valid, but it is valid of the beginning only. That community fostered practices for which the "Revivalism of Orthodoxy" and the "Socialism of Unitarianism" entertained abhorrence.

These movements beginning in Shakerism, passing through the experiments of Owen and of Fourier, and ending in the Oneida Community, possess in common certain fundamental characteristics. Each of them, though in different ways, was a scheme of communism. In the system of Ann Lee and Robert Owen each member shares equally its material advantages. Fourier did not abolish private property. Talent and capital as well as work he rewarded. His plan gave five-twelfths of the product to work, three-twelfths to

* History of American Socialisms, p. 615.

talent, and four-twelfths to capital. But out of the common gain, a minimum of subsistence was given to each member. The Oneida Community held its property in common, and in common shared the proceeds of labor.

These movements, which are religious in their origin and constitution, are also characterized by the claim of special divine illumination. Owen and Fourier, opposed to the Bible and Christianity, professed no such claims; but the Shaker and the Oneida Communist still boast of their direct spiritual insight. Like the Mormon elder, they have their "revelation." These religious endeavors, therefore, for an improved social order have been and are more or less mixed up with spiritualism.

Not only intrinsically, but also for our present purpose, the most important feature of these schemes relates to the family. Each scheme abolishes the individual family. Shakerism demands celibacy in its members. The "brethren" and the "sisters" abide in separate dormitories. If the elder Owen allowed the existence of the individual family, the younger was the early and great apostle of free love in the United States. In the phalanstère of Fourier, the privacy of domestic life is possible, but his methods substitute for the family a system of sexual license. So also the teaching and practice of the Oneida Community have been one of sexual communism, or of complex marriage. Drawing his presumed arguments from the Bible, the chief of the Oneida settlement affirms that the law of simple marriage is done away in the abolition of the Jewish law concerning meat and drink and holy days, and in the abolition of social exclusiveness. Marriage is one of the "ordinances of

the worldly sanctuary" which is ended, according to Paul's doctrine, with all other ordinances. The command of Christ "ye love one another" applies not to individual pairs merely but to the whole community. And yet this communism should not be made the recognized order of society till society has become holy and free from sin. "Religion is the first subject of interest, and sexual morality the second, in the great enterprise of establishing the kingdom of heaven on earth."* "Holiness must go before free love. Bible communists are not responsible for the proceedings of those who meddle with the sexual question before they have laid the foundation of true faith and union with God."† In his famous "battle-axe letter"‡ Mr. Noyes expressly affirms that the cessation of marriages will occur only when the will of God is done on earth as it is in heaven. "In a holy community there is no more reason why sexual intercourse should be restrained by law, than why eating and drinking should be; and there is as little occasion for shame in the one case as in the other." That the Oneida Community was thus "holy" is a belief which its practice manifested and confirmed.

In the year 1879, this communistic feature of the community was abrogated. Public sentiment, aroused by the knowledge of its shamelessness, demanded the abolition of these disgusting customs. The founder proposed "that we give up the practice of complex marriage, not as renouncing belief in the principles and prospective finality of that institution, but in deference to the public sentiment which is evidently rising against it; that we place ourselves, not on the platform

* History of American Socialisms, p. 630. † *Ibid.*, 631.

‡ Dated 15 Jan., 1837. Printed in Dixon's *Spiritual Wives*, 266-268.

of the Shakers, on the one hand, nor of the world, on the other, but on Paul's platform, which allows marriage, but prefers celibacy. . . . If you accept these modifications, the community will consist of two distinct classes, — the married and the celibates, — both legitimate; but the last preferred. What will remain of our communion after these modifications, may be defined thus: We shall hold our property and business in common, as now. We shall live together in a common household, and eat at a common table, as now. We shall have a common children's department, as now. We shall have our daily evening meetings, and all our present means of moral and spiritual improvement." *

It must be also said that these communistic schemes have still a fourth feature in common, viz., their lack of eminent success. If it be not quite true that all are, as are the larger number confessedly, failures, it is yet to be acknowledged that no one has succeeded. The Shakers still survive, but with less than one-half of their former number of members. The Oneida Community still lingers, but only on condition of their abandoning the following of a cardinal principle. The general history of all these attempts at social regeneration is a history of unfulfilled hopes, misguided enthusiasm, and wretched failure. The comprehensive cause of this result is not far to seek. It lies in the depravity and selfishness of the individual. A follower of Owen thus characterizes his master's defeat: "Mr. Owen said he wanted honesty of purpose, and he got dishonesty. He wanted temperance, and, instead, he was continually troubled with the intemperate. He wanted industry, and he found idleness. He wanted

* Woolsey, *Communism and Socialism*, pp. 73-74.

cleanliness, and found dirt. He wanted carefulness, and found waste. He wanted to find desire for knowledge, but he found apathy. He wanted the principles of the formation of character understood, and he found them misunderstood. He wanted these good qualities combined in one and all the individuals of the Community, but he could not find them; neither could he find those who were self-sacrificing and enduring enough to prepare and educate their children to possess these qualities."* The community assumes that those composing it are a race of superior beings, an assumption which is usually the direct opposite of the fact. For if such a movement attracts a few lofty spirits, whose philanthropic impulses are equalled by their intellectual culture, it also draws those throngs which Horace Greeley characterized as "the conceited, the crotchety, the selfish, the headstrong, the pugnacious, the unappreciated, the played-out, the idle, and the good-for-nothing generally; who, finding themselves utterly out of place and at a discount in the world as it is, rashly conclude that they are exactly fitted for the world as it ought to be."† With such material, failure is inevitable. Even if dishonesty, jealousy, indolence, ignorance, and vice, can be eliminated, it is found that self-love and individual happiness are principles too strong to be exorcised. The communism which has been based on religion has attained a condition more remote from failure than has that communism which has been either irreligious or materialistic. But if religion may serve to allay that selfishness which has contributed to the break-down of communistic schemes in property, it cannot usually be

* A. J. Macdonald, quoted in *History of American Socialisms*. pp. 42-43.

† *Ibid.*, p. 653.

subsidized in the interest of communism in the family. That Christianity which has purified and elevated the family will not be constrained to stain and degrade domestic life.

It is now generally conceded that the polygamy of the Mormon church had its origin in the licentiousness of Joseph Smith. To justify his criminal conduct, Smith fabricated "a revelation," in the year 1843, establishing and approving polygamy. Polygamy thus became a part of the Mormon doctrine and practice. Although hardly more than one in twenty of the men of the church have more than a single wife, plural marriages form the most significant as well as disreputable feature of the organization. The reason upon which the doctrine is based is too supersensual to be readily appreciated. The Saints at death are deified: and their glory, it is affirmed, is proportioned to the number of their wives and children. Over many believers, this consideration has influence; but over many, also, other and less worthy reasons operate in persuading them to enter into plural marriages. The wives and children occasionally form but one household. The rule, however, is for each wife and her children to dwell in their own house, in which, as inclination prompts, the husband makes his home.

The objections to any form of sexual looseness need but be touched to discover their full strength. If the considerations to be urged against communism in the relation of the sexes are stronger than those existing against polygamy, yet against both systems are many common arguments. The prominence that either system tends to give to the sexual nature, which should be confessedly held in subordination; the degradation in shame which it imposes on woman;

the physical, intellectual, as well as moral corruption which it works in man; the misery and woe which it is obliged to place on the head of childhood; the destruction of love, which is the strongest simply because its scope is the narrowest; the outrage of instincts which by natural inheritance have become the most sacred, suggest arguments against both sexual communism and polygamy. Furthermore, the equality of the number of the two sexes shows that one man was designed in marriage for one woman. As a matter of practice, it is usually found that one man is unable to give pecuniary support and moral training and influence to more than one household. If Schopenhauer's remark is false, that "marriage is halving your rights and doubling your duties," it is certainly true that a plural marriage is quartering one's rights and quadrupling one's duties. It is also evident that the sympathy between a man and woman which is implied in marriage, can exist between only two persons. Dissipation is destruction.

The question of celibacy is not limited in that way which the system of the Shakers indicates. Married life does not exclude the celibate life. Whether the married life shall be a celibate life is to be determined by that mutual love and respect which are presupposed in marriage. Purity is a duty as binding in the wedded as in the unwedded state. The body, the Bible declares, is the temple of the Holy Ghost, and it should under no condition be defiled. Reason and not passion, a regard for moral character and not a love of pleasure, respect for the rights of children unborn, suggest the principles which should guide the husband and the wife in a relation in which injustice and impurity are as easy as they are common.

And yet the Shaker doctrine of the relation of the sexes deserves no sympathy. Its foundation is false. It assumes that the ordinary relation of husband and wife is intrinsically degrading. This relation often is nothing less than degrading, and may always be so made; but it may also be made pure and elevating. Against many current and enormous evils the doctrine is a fitting protest—evils with which the physician is well acquainted; but its assumption is based on a falsehood, and its universal application would necessarily destroy the social order by death and the cessation of births.

It is to be confessed that objections against the present system of marriage exist. Those of a sexual nature are succinctly urged by the founder of the Oneida settlement: "It provokes to secret adultery, actual or of the heart. It ties together unmatched natures. It sunders matched natures."* But these and other considerations are based quite as much upon the abuse of the system as upon its proper and legitimate use. The charge of selfishness, which is constantly made against the family system, arises from an intellectual confusion of the nature of selfishness and of self-love. Self-love is the fitting regard for self; selfishness is a too great regard for self. Self-love demands simply one's rights; selfishness infringes the rights of others. Self-love is both a right and a duty; selfishness is a wrong. The family system is based in fact on self-love, not on selfishness. It deprives no individual of his rights. It simply demands those rights which are one's own, of which the granting wrongs no one. That experience, however, may suggest the wisdom of certain changes in family life we

* History of American Socialisms, p. 628.

do not doubt. These changes, we apprehend, will relate rather to external arrangements than to the principles of the family. Co-operation rather than communism in the home, as well as in business, may become the custom. But that the future will effect serious changes in either the nature of marriage or the constitution of the individual family we do not believe.

Any argument derived from what may be called the original nature of man may well be regarded with suspicion. For what that original nature was we have but a faint idea; and if we did possess a valid conception of man's nature, it would remain to be proved that the demands of that nature should receive satisfaction. If the Greek endeavored to live according to nature, the Christian feels it his duty to live in many respects contrary to nature. At the present time certainly the constitution of man is, if not totally depraved, as the theologians affirm, at least thrown into disorder by the wrong and evil committed by former generations, the effects of which each individual, to a greater or less degree, inherits. Therefore, for either the re-organization or the continuation of the present family system, the argument from nature has but small weight.

Yet it cannot be doubted that the moral intuitions and instincts possess supreme authority. The teaching of these intuitions and instincts appears to be in favor of the present family system. The demand of the moral instinct is for some object of supreme love, and this object is necessarily a single one. Both polygamy and polyandry oppose the satisfaction of this demand. This demand is satisfied in the supreme and exclusive love of one man for one woman, as exhibited in mar-

riage and in the family. These moral instincts suggest that the social development of the future will run along the line of the continued existence of the individual family.

It is, furthermore, evident that in the family are best conserved the interests of the helpless members of society. Within the domestic circle, children receive that physical care and that moral training which are of essential importance to the welfare of the State. The sick, the feeble, the aged, the imbecile, are thus shielded more effectually than is possible under any method of governmental guardianship. Any proposed change in the constitution of the family must have respect to the needs of these large and important classes of the community.

The remark is frequently made that God ordained the family, and that therefore it cannot be overthrown. The remark is true in no other sense than that God "ordains what-so-ever cometh to pass." The family is a historic growth, occurring under the rule of a personal divine power. Whether its origin was in a single pair of human beings, created by a fiat of the divine will, or in the development of lower species than the human, is a question to which no answer satisfactory to all is yet given. But it is at least true that the divine guidance of the family is no more real than the divine guidance of other institutions of mankind. The facts, however, of the early existence of the family, and of its continued growth, promise its perpetuation. Civilization has contributed to the increase of its individuality, and not to either its abolition or a change in its fundamental character.

Even those great and worthy ideals which many social reformers hold, may be realized in marriage and

in the family. The political and social equality of men and women, the improvement of the race in physical, intellectual, moral, and spiritual relations, represent purposes which marriage can achieve with greater ease than either communism, polygamy, or celibacy. It is certainly unfortunate that in the accomplishment of these ends many reformers, as Shelley, St. Simon, and Fourier, have felt it was necessary to overthrow the recognized canons of social order. The reason of their rebellion lay in the oppressive strength of social usages — usages so firmly imbedded that it was felt destruction, and not reform, was necessary for the cure of the evils they produced. In the last quarter of the century, however, it is far more evident than in the first quarter that the reform of the present social order will abolish existing social evils. Marriage invites an equality of husband and wife. It demands that the wishes of the wife should be respected as are the wishes of the husband. It requires no subordination of the one to the other. Its conditions do not necessitate that on the one side should be the right of command and on the other the duty of obedience. To each, marriage may and should mean liberty, because it means equality. For the improvement and elevation of the race, also, marriage holds out promises as rich as any other scheme of life. The physical interests of both husband and wife are in marriage more wisely conserved than in communism or polygamy. Children thus born are born with better opportunities than any other condition offers. The State cannot undertake to regulate population. The character of the children of polygamous marriages, as those of the Mormons, fails to furnish an argument for the universality of polygamy. To the intellectual, moral, and spiritual

welfare of the family, as well as the physical, marriage may be made to minister. Marriage elevates the higher faculties; communism elevates the lower, and depresses the higher. Marriage makes the sexual relation an essential but comparatively insignificant factor in the union; communism makes it not only essential, but most prominent. Marriage makes the moral and spiritual relation most important; communism, the physical. Marriage represents love as a sweet, pure, spiritual emotion; communism represents love as passion. Marriage represents the relation of husband and wife as a union of souls; communism, as a union of bodies. Marriage delights to picture the relation as continuing in some form beyond the bounds of the present life; communism is satisfied if the relation be of this life only. Thus marriage holds out stronger hopes of a proper social reconstruction than either communism or its allied practice, polygamy, provides. Celibacy holds out no hope at all of the regeneration of society, for it destroys society and the possibility of society.

To speculations upon marriage and the family the Teutonic races are singularly prone. The Latin peoples, with looser principles and practices respecting these institutions, manifest no such tendency. These speculations have more usually had reference to the spiritual than to the material or physical interests of marriage and of the family. "Affinities" "celestial," "natural," "elective," "spiritual wives" and "celestial love" are words representing the drift of these theories. In their origin, psychology was more important than physiology; in their development, their physiological relations also developed. The conduct of John of Leyden, of the Mucker at Königsberg, of the Princeites at Wey-

mouth, and of Noyes at Oneida, represent experiments to which these speculations led. These views have colored Teutonic literature. Swedenborg reports that a spiritual bridal nobler than the ordinary wedlock is the law of the higher realms of sentient being. Upon the supreme relationship of soul to soul Goethe founds a great romance, and his doctrine of elective affinities is based upon considerations more substantial, in his view, than those of romance. In every Gothic capital, in Europe and the United States, in England old and new, have these speculations been broached; but wherever they have been realized in practice, the effects have tended to destroy the unity and the purity of the family, and to overthrow the social fabric.

CHAPTER XI.

THE FAMILY DESTROYED.

The ideal of the family and of marriage. — This ideal not always realized. — Facts as to divorce in United States and Europe. — Recent increase of divorces. — Causes: General, (1) growth of individualism, (2) secularization of marriage, (3) change in social and political condition of women; special, (1) husband's belief in ownership of wife's person, (2) property, (3) wife's failure to assume her share of burdens of the family. — Remedy; the remedy does not lie in curtailment of woman's independence or rights. — The remedy lies, (1) in a proper conception of woman's responsibilities, (2) in a higher standard of belief and practice as to domestic institutions, (3) in a restoration of religious basis of marriage, (4) in uniformity of law as to marriage and divorce. — Laxity of divorce laws concomitant with increase of divorces; reasons of belief that laxity of divorce laws is a cause of increase of divorces. — Policy as to divorce and separation. — Adultery generally recognized as a sufficient cause of divorce; this view supported by teachings of Christ and Paul. — Answers to objections against separation. — Causes other than adultery sufficient for divorce.

MR. BISHOP opens the second chapter of his work on Marriage and Divorce by saying: "The nature of the marriage state does not admit of its being the subject of experimental and temporary arrangements and fleeting partnerships. The union is, and should be, for life. It is so equally in reason, in the common sentiments of mankind, and in the teachings of religion. No married partner should desert the other, commit adultery, beat or otherwise abuse the other, or forbear to do all that is possible for the sustenance and happiness of the other and of the entire family. Figura-

tively speaking, the two should walk hand in hand up the steeps of life and down its declivities and green slopes, then lay themselves together for the final sleep at the foot of the hill. Consequently, there should be no divorces, no divorce courts, no books on the law of divorce. In Utopia, it will be so ; it ought to be so in our own country."*

That this condition is not realized either in the United States or any other country is well recognized. The bonds of marriage are legally severed to an extent which awakens grave apprehension for the perpetuity of important social institutions. The evil, though not confined to the New World, seems here to be more malignant than in European States. The facts, as far as possible, should be disclosed. In Maine, in the year of 1880, 587 divorces were decreed, or one to about ten marriages. In New Hampshire, in 1860, were 107 divorces; in 1880, 338; in 1882, 314. Vermont granted in 1860, 94 divorces, one to every twenty-three marriages; in 1878, 193, one to every fourteen marriages. Massachusetts decreed in 1860, 243 divorces, one to fifty-one marriages; in 1878, 600, one to less than twenty-two marriages.† Rhode Island declared in 1869, 162, one divorce to fourteen marriages; in 1882, 271, one to eleven. In 1849, Connecticut granted 91 divorces, probably one divorce to about thirty-five marriages; the annual average for the fifteen years following 1863 was 445, or one to a fraction more than ten marriages. In the year of 1878, the New England States recorded 2113 divorces, and in later years the number has probably been even larger.

Outside of New England the condition is hardly

* Marriage and Divorce, 6th ed., I., p. 17.

† See note on next page.

better, and the increase in the ratio of divorces to marriages is as great. In 1865, Ohio registered one dissolution to twenty-six marriages; in 1881, one to seventeen; in 1883, one to sixteen. In seventy of its ninety-two counties, for the year ending July 1, 1884, Indiana revoked 1237 marriages; one divorce for less than twelve marriages. Twenty-four counties of Michigan in the year 1881 furnished one divorce for thirteen marriages. One of the largest counties of Minnesota recorded in 1871 one divorce to twenty-nine marriages; in 1881, one divorce to twenty-three marriages. In another county, within a decade the proportion rose from one divorce to nineteen marriages to one divorce for twelve. For six years the annual proportion of suits for divorce in Cook County, Illinois (Chicago),

NOTE—The complete record is given by the Massachusetts Bureau of Statistics of Labor: Eleventh Annual Report, p. 234:—

YEARS.	Number of Marriages.	Number of Divorces.	Ratio of Divorces to Marriages.
1860	12,404	243	1 to 51.0
1861	10,972	234	1 to 46.8
1862	11,014	196	1 to 56.2
1863	10,873	207	1 to 52.5
1864	12,513	270	1 to 46.3
1865	13,051	333	1 to 39.2
1866	14,428	392	1 to 36.8
1867	14,451	282	1 to 51.2
1868	13,856	339	1 to 40.8
1869	14,826	339	1 to 43.7
1870	14,721	379	1 to 38.8
1871	15,746	325	1 to 48.4
1872	16,142	343	1 to 47.1
1873	16,437	449	1 to 36.6
1874	15,564	647	1 to 24.1
1875	13,663	577	1 to 23.6
1876	12,749	525	1 to 24.2
1877	12,758	553	1 to 23.1
1878	12,893	600	1 to 21.4
	259,061	7233	1 to 35.8

to marriages, was as one to nine. In 1882, every thirteen marriages resulted in one divorce. St. Louis in one year granted 205 divorces, and in the next year was obliged to recognize 430 suits. In 1881, Louisville had one divorce suit for thirteen marriages. The city of New York granted 212 divorces in 1870, and in 1882 316. In 1882 San Francisco issued 2605 licenses for marriage, and 309 decrees of dissolution; one divorce for eight marriages. In twenty-nine of the fifty-two counties of California, in the same year of 1882, were granted 5849 licenses, and 789 divorces; one divorce for seven licenses. One county in California deserves perhaps to be called the banner divorce section of the United States. It bears the name of Marin, and has as its capital San Rafael, a snug and acceptable retreat, under the shadow of great cities, easy to flee to for the concealment or despatch of the unseemly business. This county "reports fifty-seven licenses, and twenty-seven divorces; or one divorce for every two and eleven-hundredths marriages." *

The facts as to the destruction of the family through divorce are not so completely collected in Europe as in the United States. Yet of several countries we possess quite full statistics. Although legal dissolution of the bonds of marriage is not so frequent in the Old World as in the New, the recent years manifest a large relative increase in the number of divorces.

In England and Wales, in 1870, were granted 374 divorces (inclusive of those called "absolute" and those "absolute after six months"), and 22 separations; in 1871, 357 divorces, and 22 separations; in 1872, 240

* Rev. Dr. I. E. Dwinell of California, in *New Englander*, January, 1884, p. 49. The secretary of the National Divorce Reform League, Rev. S. W. Dike, furnishes many of these statistics.

divorces, and 22 separations; in 1873, 487 divorces, and 23 separations; in 1874, 478 divorces, and 36 separations; in 1875, 367 divorces and 19 separations; in 1876, 590 divorces and 27 separations; in 1877, 450 divorces and 49 separations; in 1878, 788 divorces and 51 separations; in 1879, 625 divorces and 38 separations. France, in 1866, dissolved 2813 marriages; in 1877, 3216 marriages. Italy, excluding Rome and Venice, from 1866 to 1880, in a population of twenty-six millions, granted 11,431 separations. In the year of 1880 Switzerland annulled 1069 marriages; about one marriage in every twenty is followed by divorce. In Roman Catholic Belgium, although only one-third of one per cent of the marriages are dissolved, the ratio doubled in the decade of 1866-76. In Protestant Germany about one marriage in every hundred results in divorce. In certain parts the ratio is much higher. In Saxony it approaches three per cent, and in Berlin it is five and a half. In Prussia divorce cases in three years (1875-78) increased from 6549 to 7720. In the little kingdom of Saxony, between 1871 and 1879, legal separations sprang up from 1049 to 1728.

It has been calculated that in Denmark, in 1871, there was one divorce to 27.51 marriages; in 1879, one to 24.4. In France, in 1871, the ratio was as one to 222.21; in 1879, as one to 109.4. In Holland, in 1871, as one to 192.5; in 1880, as one to 122.46. In Sweden, in 1871, as one to 201.61; in 1880, as one to 134.66. In Belgium, in 1871, as one to 350.87; in 1880, as one to 135.12. In England and Wales, in 1871, as one to 1020.4; in 1879, as one to 460.83. In Russia, in 1871, as one to 751.87; in 1877, as one to 487.8. In Norway, in 1875, as one to 2857.14; in 1880, as one to

1428.57; and in Scotland, in 1871, as one to 9090.9; and in 1880, as one to 3448.27.*

The following table, taken from the tract of the Italian government, already referred to, represents the annual average of divorces for one hundred thousand of inhabitants for a definite period. It suggests the alarming extent to which the disintegrating domestic tendencies have worked, especially in parts of the United States:—

STATE.	PERIOD.	Annual Mean of Divorces to 100,000 Inhabitants.
Rhode Island	1873-79	72.30
Connecticut	1872-79	68.90
Vermont	1872-76	50
Switzerland	1876-80	35
Massachusetts	1871-78	30.50
Denmark	1871-81	28.60
Saxony	1875-78	24
Thuringia	1871-78	10
Hungary	1876-80	7.36
Roumania	1871-80	6.70
Württemberg	1876-79	6.50
France	1871-80	6.25
Baden	1874-80	5
Holland	1871-80	4.52
Sweden	1871-80	4.20
Alsace-Lorraine	1874-80	4.20
Belgium	1871-80	3.60
Finland	1875-79	3
Italy	1866-79	1.60
Scotland	1860-80	1.20
Russia (Including only orthodox population.)	1871-77	1.10
England and Wales	1871-79	0.90
Norway	1875-80	0.33

* Calculations made by Rev. Dr. I. E. Dwinell from facts furnished by Rev. S. W. Dike: *New Englander*, January, 1884, p. 50. See also *Le Separazioni Personali Coniugi e i Divorzi in Italia e in alcuni altri Paesi*. Roma: 1882. An admirable work, whence many facts are drawn.

It thus appears that these States of New England grant, relatively to the size of their population, more divorces than any other country named. The evil of divorces appears to be most notorious in the oldest-settled parts of New England.

The proportion to which the various offences operate in effecting divorces are represented in the following exhibit:—

Cause.	Italy.	France.	Saxony	Baden.	Swe- den.	Fin- land.	Rou- mania.	Mass.
Adultery of Wife.	8.57	4.78	40.61	19.48	4.29	15.87	4.46	11.04
Adultery of Husband.		2.51		10.39	8.57	6.35	3.70	12.63
Criminal Sen- tence.	0.49	1.01		1.30	4.29	3.18	1.27	0.53
Abuses, etc.	39.05	91.71	24.09	61.04	61.42	11.11	89.17	16.55
Desertion.	16.03					58.73		41.64
Miscellaneous	35.86			35.30	7.79	21.43	4.76	17.61

The causes leading to the increase of divorces within the last century are many and far-reaching. The student cannot hope to do more than to point out certain general tendencies in society which have contributed to this result, and to suggest certain considerations which have influenced public sentiment to tolerate an evil so serious.

The last fifty years have apparently changed the marriage relation from a permanent and lifelong state to a union existing during the pleasure of the parties. The change thus swiftly wrought is so revolutionary, involving the very foundations of human society, that we must believe it to be the result not of any temporary conditions, but of causes which have been long and silently at work.

The cause underlying, and in a sense including, all

other causes, is that growth of individualism which is the direct product of the Reformation. The central principles of the Reformation were the principles of human liberty and human responsibility; the right of every man to judge of truth and duty for himself, and to render his account to God alone. That the right of individual liberty is at the present time in danger of being pressed so far that the counterbalancing truth of individual responsibility will cease to act, every student of social problems must admit. It is in the marriage relation that this tendency is now most clearly indicated. The belief is prevalent, and seems to be growing, that marriage is a civil contract, and a civil contract only. Like other contracts, it is entered into for the pleasure and convenience of the parties, and, like other contracts, may be terminated when pleasure and convenience are no longer served. We are fast coming to have the *state* of matrimony only in name. In this respect marriage is following the drift which Sir Henry Maine has pointed out as characteristic of progressive society, the drift from status to contract.* “In Western Europe,” says Maine, “the progress achieved in this direction has been considerable. Thus the status of the Slave has disappeared—it has been superseded by the contractual relation of servant to his master. The status of the Female under Tutelage, if the tutelage be understood of persons other than her husband, has also ceased to exist; from her coming of age to her marriage, all the relations she may form are relations of contract. So, too, the status of the Son under Power has no true place in the law of modern European societies. If any civil obligation binds together the parent and child of full

* Ancient Law, p. 163.

age, it is one to which only contract gives its legal validity." The popular conception of marriage seems at present to fluctuate between these two antagonistic ideas — marriage as a state and marriage as a contract — with a strong leaning, outside the pale of the church, to the idea of contract. In many parts of our country, it is as easy to dissolve the marriage relation as the relation existing between guardian and ward, or master and apprentice.

Akin to the general cause already mentioned is the secularization of marriage. To the idea of marriage as a state, the Christian religion added another idea, which invested marriage with a religious character. In this, Christianity not only carried out the spirit of its founder, but followed the precedent of other religions. So far as we have any knowledge of marriage forms among the ancients, they partook of the nature of a religious service. The most important part of the nuptial ceremony among the Greeks was that in which the husband and wife sacrificed to the domestic gods together in recognition of the establishment of a new family. This ceremony was known as the *τελος*, and this word, which signifies a religious rite, became one of the ordinary words for marriage.*

In the days of Rome's purity, a similar custom prevailed, and a marriage celebrated by the *confarreatio* was sacredly binding. While divorce was granted to those joined by *coemptio* or by *usus*, the dissolution of the religious tie was difficult.

Although the prevailing Roman law at the opening of the Christian era regarded marriage as a civil contract, and although the early Christians may have been influenced by that view, it is nevertheless true that

* Pollux, III., 3, 38.

Christianity has from the beginning stamped the institution as of divine ordaining and of a nature peculiarly sacred and binding. In time, the Church elevated it to the dignity of a sacrament, and thus irrevocably obligated itself to maintain the indissolubleness of the bond. While the Protestant church has always admitted certain causes as sufficient to release a man or woman from the bond of matrimony, it has yet never failed to emphasize the religious character of the union.

Though the clergy and church councils of all sects thus regard marriage, it is plain that the mass of the people are drifting away from this conception. Its sacredness is so far recognized that clergymen are still usually chosen to perform the ceremony. Few persons from choice employ an officer of the law for this purpose. Among the members of the Anglican or Protestant Episcopal communions the sacred altar is preferred as the place for solemnizing a marriage; and in these churches the religious idea of marriage is no doubt better preserved than in any other Protestant denomination. The fact remains that in the United States, even among professed Christians, marriage has ceased to be a religious observance, and has become an occasion of social festivity. This fact, while it may be in a measure the result of the present loose views regarding marriage, is, we are forced to believe, also a cause of these loose views. The Puritan protest against the Church of England, no less than the protest against the Church of Rome, has had its effect upon the popular conception of marriage. Jealousy for the prerogatives of the state against those of the church was a prominent feature of that revolt. This movement has gradually stripped the church of civil power, and withdrawn it from association with temporal affairs. The

minister performs a marriage, not by virtue of his priestly authority, but as an officer of the law, duly commissioned for that purpose.

The conception of marriage as a relation purely secular has been at the basis of our modern divorce legislation. This legislation recognizes the right of the individual and the right of the state to an interest in the dissolution of the marriage tie. It does not in the least recognize any peculiarly sacred character in the institution. The growth, moreover, of atheistic and socialistic principles in society has weakened in the popular mind the conception of marriage as a divine ordinance, and therefore as a tie of binding force. To those who eliminate God from the world it becomes an easy task to rob marriage of its sacred character. The institution of marriage rests upon a triangular base. It is founded upon the interest of the individual, upon the interest of the state, and upon divine ordinance. To weaken this foundation upon any side causes the structure to totter.

That the changes which have been wrought in the social and political condition of woman have tended to an increase of divorce, is obvious. These changes have been coincident with the changes in our marriage and divorce laws. They have made possible what under the common law was impossible. Under this law, a woman had no legal existence. Upon marriage her identity was suspended, merged into the existence of her husband. As an individual the rights of woman are now fully recognized before the law. While her political disabilities have not been removed, save in two Territories, her rights to acquire and hold property, to carry on business, or to be a party to a suit, are fully granted. Her sphere of activities has

broadened in every direction. In nearly every business, trade, and profession, women now appear as the competitors of men. Fifty years ago, the household and the schoolhouse marked the boundaries of the sphere of woman's work. The industries in which she now engages are numbered by the hundreds. Such a radical change, made in so short a time, cannot fail to exercise a disturbing effect on the family. If she fails to find happiness, justice, and recognition of her personality, in her position as wife and mother, a woman is now independent of this position, so far as the supply of her needs is concerned. Means of a decent livelihood for a competent woman open on every side. The educational advantages for women have kept pace with their enlarged opportunities. The education of the average American woman, so far as it pertains to a knowledge of books, is doubtless superior to that of the average man. Especially is this true in the middle class, a class among which the rate of divorce is by far the highest. Among this class in the older States the intellectual superiority of the wife to the husband is plain to even a casual observer.

Nor is education solely responsible for this state of affairs. The swift social revolutions which each generation witnesses in American society stimulate the belief that the working-woman of to-day may be the queen of society to-morrow. The ambition of the boy may be justly aroused by such examples, for upon his own efforts depends his advancement. The advancement of a girl, however, partakes of the nature of a game of chance, for largely upon the accident of marriage depends her career in life. Under our common-school system, the daughter of a judge and the daughter of a hod-carrier receive the same education at

school; nor can this system be well impeached, for the daughter of the judge may become the wife of a hod-carrier, while the hod-carrier's daughter may live to see her husband wear the ermine.

In a stable society, like that of England, where distinctions of rank and social position are settled by birth rather than by achievement, the questions connected with the family do not present such complications as in our American life. The absorbing passion in the United States, among both men and women, for social advancement, corrupts much that is most precious in the domestic relations. Our modern style of living has also become complicated, and with its complication has come friction unknown in the simpler life of our fathers. In the former time marriages among strangers were almost unknown. The young men followed the rule which Abraham laid down for his son Isaac, and sought their wives in their own country and among their own kindred. Thus both husband and wife knew not only the peculiarities, tastes, and abilities of each other, but also of the family of each, perhaps for generations. Family life at once succeeded to marriage, and in mutual duties and responsibilities was laid the corner-stone of a happy home.

To-day, in a measure, boarding-houses have supplanted homes, and a large class of idle women, whose husbands toil for daily bread, naturally results. A growing distaste for assuming the duties and responsibilities of motherhood and fatherhood is apparent. Children make a bond of union between a husband and wife which nothing but a strong mutual affection can equal. When they are absent, petty bickerings and jealousies creep into the family, which would otherwise be swallowed up in the overmastering desire for the common good.

This brief survey of the social changes which have been wrought in America during the last half-century shows that the present is a transition period in the history of the family. Thus far the changes have been one-sided. The ideas regarding the rights and privileges of women in *society* have undergone a complete transformation. No corresponding change has taken place regarding the rights and privileges of women in the *family*. The sphere of woman has wonderfully expanded outside the marriage relation; within it, hardly at all. Society attempts to put new wine into old bottles when it educates a woman to the level of a man; gives her control of her property; opens to her avenues of self-support and advancement, — and yet in her relation as wife and mother continues to treat her as a subordinate. The idea of ownership in a wife is still potent in the minds of many men. Petruchio claims his wife as “my ox, my ass, my anything,” but Catharine is no longer charmed and tamed by his spirit of mastery. Every change in the position of woman necessitates a corresponding change in the position of man, and these corresponding changes have not yet occurred.

Furthermore, the expansion of woman's duties have not kept pace with the expansion of her rights and privileges. It should not be forgotten that formerly woman's duties were great, while her rights were unrecognized. With the enlargement of her rights we see, not an enlargement, but rather a contraction, of her duties. We thus find a class of irresponsible women, who, while jealous of all rights, neither hold themselves, nor are held by society, to a strict performance of duties commensurate with their rights.

From the consideration of these general causes

underlying the present frequency of divorce, we turn to notice the more specific causes in individual cases. Few libellants for a divorce are conscious of the general conditions of society which have tainted modern life with the divorce malaria. They are conscious of some strong personal grievance, which they thus seek to remedy.

A somewhat careful study of a number of unhappy marriages in which redress has been sought by divorce leads to the conclusion that where gross vice is not the source of such infelicity, the grievances have their root in one of three reasons. The first cause is the belief on the part of the husband, sanctioned by law and custom, that marriage confers upon him the ownership of his wife's person. The second reason grows out of considerations of property. In case the wife has property, she is often unwilling to surrender it to the control of her husband, in case she has no property, her inability to acquire any interest in the property of her husband by her labor as wife and mother is keenly felt. So long as a man lives, his wife is dependent upon his bounty. Incompatibility is a common euphonism for niggardly practices in the household. The third reason is the unwillingness on the part of the wife to assume her share of the mutual duties and burdens of married life. Marrying a poor man, many a woman is not willing to live as the wife of a poor man. Her discontent and unreasonable exactions thus pave the way to the rupture of the marriage bond.

These three reasons, thus briefly stated, it is hardly necessary to elaborate. Their confirmation must be found in a careful analysis of such cases as may come under personal observation.

Can adequate remedies for the evil of divorce be

found? That the evil has already become so serious that it demands a remedy, most calm students of social problems are agreed. Yet, on the other hand, it is doubtful if the fears of alarmists regarding the future effects of divorce are ever likely to be realized. Serious as the question is, and fraught as it is with peril to the highest interests of society, the evil must strike far deeper into our life than it has yet struck before social anarchy will result. It thus far seems to be rather an excrescence than a deep-seated disease. Happily, the dignity and purity of the marriage relation have enlisted upon their side the noblest instincts and emotions of which human nature is capable. These, with the help that law and public opinion can give, are sure, ultimately, to do far more than restore marriage to its pristine sanctity. They will raise it to a higher place than it has ever yet held in the temple of human society. It is nevertheless in the power of society to seek out and apply certain remedies to check the increase of the evil, and to aid in forming a truer conception of the rights and duties involved in the institution of marriage. These remedies will be now considered.

The problem of the adjustment of the independence of women to the Christian idea of the family and of marriage is serious and critical. A social and legal change is occurring in the United States similar to that through which the Roman republic passed. In Rome woman achieved her social independence. The immediate result was a great increase in the number of divorces and a yet greater increase in dissoluteness. A remote effect was the overthrow of the republic and the fall of the empire. It is hardly open to question that in the United States a not dissimilar tendency is

apparent, and with results in part similar. Already the enlargement of woman's rights has increased the number of divorces; and it may have already also proved a cause of dissoluteness, and have tended to disintegrate the conserving forces of the republic.

Various methods are open for putting an end to these disastrous consequences. And yet it does not seem that society would agree to end these consequences by an express limitation of the present independence of women. It is not the genius of American institutions and order to take away social and political rights which have once been granted. We believe it is the verdict, as common as it is strong, that no abridgment of woman's independence shall take place. The movement for even the extension of the suffrage is much stronger than the movement in opposition. The family is not, therefore, to be preserved, divorces are not to be diminished, at the cost of woman's independence. Such a remedy society will not suffer to be used, nor is such a remedy to be desired. The family is to be preserved and separations diminished by the adjustment of the principle of woman's independence to the Christian conception of the nature of the family and of marriage.

This adjustment is to consist less in any absolute change in either woman's independence or the family than in a change in the conception of this independence. This independence has been granted, and in part accepted, as a matter of grace, and not of right. In it the chivalric idea of woman has prevailed. It has not, therefore, been accompanied by a sense of responsibility. The principle of the Protestant Reformation of individual liberty was bound up with the correlative principle of individual responsibility. The French

Revolution proclaimed the principle of individual liberty; it forgot the opposite and equally important principle of individual responsibility. Therefore, the Reformation was conservative and beneficent, and the Revolution destructive and evil. In the movement towards woman's independence, liberty and responsibility, rights and duties, have not made equal progress. In this movement, as in every movement, the increase of liberty without a corresponding increase in responsibility is liable to cause liberty to eventuate in license, and irresponsibility in recklessness. Duties are thus lost in rights. In a small degree, this condition has actually resulted. Wives have not appreciated responsibilities or duties as they have enjoyed liberty and rights. The laws even fail to represent the change. The woman who as wife has the control of her property can yet oblige her husband to pay her debts.

The adjustment, therefore, of the independence of women to the Christian conception of the family and of marriage is to be made through a stronger emphasis upon the duties and responsibilities which this independence involves and should impose. These duties and responsibilities should be elevated with a prominence corresponding to the conspicuous position of the correlative liberties and rights. A proper appreciation of these duties would create and foster a union of interests in the family. It would tend to form an equality of position and of prerogative in the conjugal relation. It would thus strengthen the marital bond.

To effect this adjustment, the enactment of statutes increasing woman's rights should be accompanied by statutes increasing also, so far as may be, her responsibilities. Women should demand no enlargement of their liberties — and their liberties and rights should

be in many respects enlarged — without being willing to accept also an enlargement of their duties. Wives should be as willing to accept an increase of duties as of rights, and husbands should cease to judge their wives by merely chivalric standards of grace. Thus the Christian idea of marriage and of the family may be maintained, and the independence of women sustained.

In the restoration of the family and of marriage to their proper place, a higher standard of belief and of practice as to these institutions is necessary. The basis in sex should be, like every foundation, hidden as deeply as possible. The social, intellectual, and emotional elements should be made prominent. Reasons which spring from considerations of sex represent under various disguises the chief causes of divorce. The elimination of such considerations from the conjugal relationship would foster its permanence. This desirable end is the goal of a moral practice commended alike by the individual conscience and the teachings of the Christ.

Along this same line of thought, it may be noted that the wise exercise of a strict parental authority for a generation would result in a race of young men and women better qualified for the rights and duties of marital life. The parental authority of the forefathers was strict, but it not infrequently lacked wisdom in its application. The parent of the present is, in his desire to be wise, under the peril of abrogating his authority. Children taught and obliged to obey are best qualified for going forth from the parental hearthstone and building one of their own. Children trained in an atmosphere of moral purity, and specifically trained to respect the rights of others as well as of themselves,

develop naturally into worthy husbands and wives, fathers and mothers.

It is evident that in this work of the restoration of the family and of marriage, the Protestant church may co-operate. In its teachings upon these subjects the Catholic church has been more faithful than the Protestant. The Church of Rome has since the Reformation been less timid than the Protestant in denouncing sexual sins committed both within and without the bonds of marriage. Although other considerations had influence, yet the English Reformation was promoted by the refusal of Clement VII. to allow Henry VIII. to divorce Catherine in order to marry Anne Boleyn. The Catholic pronunciamientos and books of devotion have been and are more explicit and severe in condemning sexual sins than the Protestant clergy. The Protestant church and its ministry have thus proved negligent. They have not gone so far as either their duty obliged, or as the public conscience demanded, or as the public sense of decency allowed, in impressing the commandment, at once new and old, "Thou shalt not commit adultery." They should show the sinfulness of its infraction, as well as of the commandment against blasphemy, perjury, or stealing.

The Protestant church may also aid in the restoration of the family to its proper position by learning somewhat from the Catholic doctrine of marriage. That marriage is a sacrament has been the authoritative teaching of the Church since the General Council of Florence of 1439, and since the issue of the synodical epistle of Pope Eugenius in 1442. The influence of this decree in maintaining the union of the family has been great. Divorce has not been permitted. The chastity of that nation, the Irish, which is pre-eminent

in its devotion to the Catholic church, is unexampled among civilized peoples.* This view of marriage as a special means of divine grace the Protestant church cannot accept; but this church can, with full loyalty to its historic spirit and symbols, surround marriage with religious sanctions. It may indicate and practise its belief that wedlock is more than a contract. It may show that marriage is not simply an agreement between one man and one woman, but that it also bears relations to society and to God. It may impress the duty of entering into this state with the accompaniment rather of religious services than of social festivities. It may well follow the example of pagan Rome and Greece in making the marital ceremony a religious ceremonial. The Established Church, in England, and the Episcopal Church, in the United States, have done well in following the spirit of the Catholic doctrine. The dissenting churches, the Congregational, Baptist, Methodist, and other American churches, should no longer hesitate to emphasize the religious elements of marriage.

The practice of the Catholic church in requiring the publication of banns is wise. If it is not to be restored to use in Protestant churches, its necessary publicity may well be imitated in the civil law and procedure. In several States a boy and a girl of fourteen can marry without publication of banns, without the presence of a minister or of an officer of the Com-

* In Ireland the percentage of illegitimacy is the lowest. In 1878 it was only 2.31. "In Switzerland Protestants and Catholics are in numbers as 3 : 2; but in 1879 the divorces of Protestants and Catholics were as 695 : 86, or 8 : 1. Since Protestant Germany has seized Catholic Alsace, the divorces, 1874-8, have increased from 21 to 87." *Bibliotheca Sacra*, January, 1885, p. 69, taken from Oettingen's *Moral-statistik*, a compendium of great worth.

monwealth. This possibility often results in ill considered, frivolous, and ruinous marriages. If marriage is a contract, the parties to it should, like the parties to any contract, be of age, or, if under age, should possess the permission of their legal guardians. The intentions of marriage should not only be recorded, but also published. They should, furthermore, be published several days before the solemnization of the marriage. If objections to the union exist, opportunity for their presentation should be granted. Marriages contracted in haste are most prolific in separations.

Uniformity of law respecting marriage and divorce throughout the United States would tend to effect the preservation of the family. The laws as to divorce are now very diverse.* The diversity creates many legal and domestic embarrassments. In one State a divorce may be granted for a cause not recognized in an adjoining Commonwealth. Persons legally married and legally divorced in one State might be, on taking up a residence in another state, adjudged guilty of bigamy or adultery, and their children as illegitimate. In some States divorce is absolute for both parties; in others the guilty partner is not allowed to remarry.

* "A citizen of the United States, journeying with his wife from Maine to Louisiana, passes, in succession, within thirty hours, under a dozen different systems of law regulating (?) the relation that UNITES them — systems differing as to the nature of marriage, the manner of contracting it, the consequences of divorce, the effect in one State of divorce decreed in another, and in very many other respects." Preface by D. R. Jaques to Noble's *A Compendium and Comparative View of the Thirty-eight State Laws of Marriage and Divorce in the United States*. A like dissimilarity prevails respecting the legal status of the children of a dissolved marriage. In Kentucky the issue of a marriage dissolved by reason of mental incapacity is legitimate (to both parties); in Maine the issue is legitimate as to the party capable, but in Rhode Island the issue is illegitimate.

A marriage lawful in one State may be felony in another. This diversity of law affects the status of the husband and of the wives and children of successive marriages. The following illustration of these evils is suggested by an eminent jurist: "A is married in New York, where he has resided for years, and has a family and is the owner of real and other estate. He desires divorce and goes to Indiana, where that thing is cheap and easy. Upon complying with some local rule, and with no actual notice to his wife, he gets a decree of divorce, and presently is married in that State to another wife, who brings him other children. He again acquires new estates; but, tiring of his second wife, he deserts her and goes to California, where in a brief space he is again divorced, and then marries again, forming a new family and acquiring new real and personal estates. In a few years his fickle taste changes again, and he returns to New York, where he finds his first wife has obtained a valid divorce for his adulterous marriage in Indiana, which sets her free and forbids his marrying again during her lifetime. He then slips into an Eastern State, takes a residence, acquires real property there, and after a period gets judicially freed from his Californian bonds. He returns to New York, takes some new affinity, crosses the New Jersey line, and in an hour is back in New York, enjoying so much of his estate as the courts have not adjudged to his first wife, and gives new children to the world. . . . He dies intestate. Now what is the legal status and condition of the various citizens he has given to our common country? and what can the States of their birth or domicile do for them? A few words will show how difficult and important these questions are. The first wife's children are doubtless legitimate and

heirs to his estate everywhere. The Indiana wife's children are legitimate there, but probably illegitimate everywhere else. The California children are legitimate there and in New York (that marriage having taken place after his first wife had obtained her divorce), but illegitimate in Indiana and elsewhere; while the second crop of New Yorkers are legitimate in the Eastern States and New York, and illegitimate in Indiana and California. There is real and personal property in each of these States. There are four widows, each entitled to dower and distribution somewhere, and to some extent, and a large number of surely innocent children, whose legitimacy and property are at stake. All these legal embarrassments spring from want of uniformity of laws on a subject which should admit of no more diversity than the question of citizenship itself."*

* Judge Noah Davis, *North American Review*, vol. 139, No. 1., pp. 39-40.

Judge Story, writing fifty years ago, remarks:—"Some of the most embarrassing questions belonging to international jurisprudence arise under the head of marriage and divorce. Suppose, for instance, a marriage celebrated in England, where marriage is indissoluble, and a divorce obtained in Scotland *a vinculo matrimonii*, as it may be, for adultery under the laws thereof, will that divorce be operative in England, so as to authorize a new marriage there by either party? Suppose a marriage in Massachusetts, where a divorce may be had for adultery; will a divorce obtained in another State, for a cause unknown to the laws of Massachusetts, be held valid there? If, in each of these cases, the divorce would be held invalid in the country where the marriage is celebrated, but it would be held valid where the divorce is obtained, what rule is to govern in other countries as to such divorce? Is it to be deemed valid, or invalid, there? Will a new marriage contracted there by either party be good, or be not good? These and many other perplexing questions may be put: and it is difficult at the present moment to give any answer to them which would receive the unqualified assent of all nations."—*Conflict of Laws*, 8th ed., 277.

So lamentable conditions not only legal but also personal, springing from a diversity of laws respecting marriage and divorce, should be remedied. The remedy is simple enough: it lies in the addition of these words to the Constitution of the United States. The fourth subdivision of the eighth section of the first article might well be so amended as to read: "Congress shall have power to establish a uniform rule of naturalization, and uniform laws on the subjects of bankruptcies, *marriage and divorce* throughout the United States." Such a provision would tend to create, even if it failed at once actually to create, a uniformity of statutes among all the States in respect to this most important question.

The immediate and legal cause of the destruction of the family appears to be divorce. Divorce is, however, designed to be only the declaration of a destruction which had previously been wrought. Its purpose is certainly not to foster the disintegration of the family; yet the ease of securing divorce seems to result in an increase of these destructive tendencies. To what extent the laws multiplying the causes of divorce are the cause of an increased number of divorces, or to what extent these laws are the result of a more liberal public sentiment as to the marital bond, it is hard to say. The facts are many and emphatic in their evidence: the greater the freedom of laws respecting divorce, the larger the number of divorces. The first divorce law of Massachusetts was passed in 1786, and recognized only two causes for divorce — adultery and impotency. Before 1870 the law had been so amended as to recognize no less than seven additional causes. The uniform tendency of legislation was toward greater ease of divorce. "Extreme cruelty," "cruel and abusive treatment,"

“neglect to provide,” the less serious of the causes, were among the last added, being introduced in 1870. The greater laxity of divorce laws was accompanied in the last part of this period (for which accurate statistics are available) by a vast increase in the proportion of divorces to marriages. In the nineteen years between 1860 and 1878, the average ratio was one divorce to about 36 marriages. In 1860, it was one divorce to 51 marriages; in 1878, it had increased to one divorce for about 21 marriages.* Which set of facts represents the cause, and which the result? It is doubtless true that liberal laws as to divorce are in part the result of a more liberal public opinion. Law is usually the reflection and crystallization of the sentiment of the people. Yet it seems also true that more liberal legislation tends to suggest and to foster a more liberal practice. The law re-acts, deepening and extending the sentiment whence it originally sprang. It opens more widely the door of opportunity. It lessens the perils of domestic broils. It is a temptation, even though negative, to cherish differences in opinion and practice on the part of the members of the family. The restrictive legislation of Connecticut and of Vermont in recent years is said by Rev. S. W. Dike to have resulted in a diminution of divorces in the former State of one quarter, and in the latter of nearly one third. Judge Jameson affirms: “It is our firm conviction that, if the truth could be ascertained, at least two thirds, perhaps four fifths, of the seven hundred and fourteen cases of divorce in Chicago during the past year either were fraudulent in fact, or, with reasonably conciliatory temper on the

* 11th Annual Report of the Massachusetts Bureau of Statistics of Labor, p. 234.

part of the couples divorced, and under sufficiently *stringent legal* conditions, were avoidable or preventable."* It is therefore evident that the statute law has much influence, either good or evil, in the endeavor to resist the tendencies destroying marriage and the family.

The policy of both the American and English law has been to oppose all separations except as they were represented in complete divorce. Partial divorce, or divorce technically known as from bed and board, has never been popular with the courts, though the recent English acts † give to separation a recognition before denied. Many considerations may be urged for the proposition that for the lesser offences against the marital bond, only partial divorce, or separation, should be granted, and that absolute divorce should not be allowed except as the penalty for the severest offence of adultery or its moral equivalent.

That adultery, or its moral equivalent, in the form of an attempt on the life of one consort, is occasion sufficient for the annulling of a marriage is recognized in all legal codes. The reason is the simple fact that adultery of itself destroys the family unity. The adultery of the wife may bring the children of another than her husband within the family; the adultery of the husband may carry the children which should properly belong to his own home to another hearthstone. If the one offence introduces "serpents into the dove's nest," the other offence bears the doves into another nest than their own. Thus the family is torn into fragments. The decree of absolute divorce is only a declaration according to the facts.

* North American Review, Vol. 136, April, 1888, p. 323.

† Acts of 1857, 1858, and 1860.

On this basis, the adultery of the husband is no less heinous than the adultery of the wife. American laws have usually taken this view. The English laws have been more severe in respect to the adultery of the wife. The greater criminality may be supported by several considerations: "A woman's chastity is of more concern to one's self, to society, and to a sound posterity, than a man's, her carnal appetite is less violent; nature sets a stronger seal upon her loose indulgence of passion, and when she yields guiltily to man's solicitation, so delicate is her organization that the stain left upon her moral nature is deeper. Her body is the temple of posterity, and an illegitimate conception her lasting pollution. . . . So far as relates to a wife living in the usual domestic seclusion, guilty love must generally precede her adultery; her mind and heart becoming depraved before she yields a sinful assent; but with a husband this does not necessarily follow, since opportunity and the sexual desire operate ardently, quickly, and recklessly, to some present sensual gratification." *

This general doctrine that adultery, or its moral equivalent, is the sole cause of absolute divorce is supported by the teachings of Christ as well as by the nature of the offence.

In no less than four passages of the New Testament,† representing at least two discourses, Christ directly refers to marriage and its dissolution. His words were spoken to a people among whom, and at a time when, carnal crimes abounded and separations of husband and wife were common. In two of these passages he suggests no cause as sufficient for breaking the bond of

* Schouler's Husband and Wife, pp. 531-532.

† Matt., v., 31-32, xix., 3-9; Mark, x., 2-12; Luke, xvi., 18.

marriage; in the two other passages he names fornication (*πορνεία* — not *μοιχεία*, exact word for adultery) as such a cause. The most important truth of these teachings is perhaps the easiest of inference: it is that the absolute union of one man and one woman is the ideal standard of the marital state. "Wherefore they are no more twain, but one flesh. What, therefore, God hath joined together let not man put asunder."* This standard is absolute, as is the command of Christ to be perfect and to love your neighbor as yourself. Towards its attainment constant progress should be made. In the perfected state of human society it will be realized. Adultery, fornication, and similar offences, infractions of the normal rule, destroy this union. Under such circumstances, affirms Christ, divorce, declarative of the actual rupture of the domestic bond, may be recognized.

This conception of marriage as an absolute union of one man and one woman is also supported by two passages† in the writings of St. Paul. "The woman which hath a husband is bound by the law to the husband so long as he liveth," and "Let not the wife depart from her husband," "Let not the husband put away his wife," are a continuation of the teachings of Christ. Even if she depart, "let her remain unmarried, or be reconciled to her husband." To the members of the church at Corinth, to whom these words were written, Paul fails to name any cause as sufficient for absolute divorce. But in the case of a marriage in which one party is a Christian and the other a heathen, the apostle recognizes desertion on the part of "the unbelieving" as a cause sufficient for absolute divorce. "But if the unbelieving depart, let him depart. A

* Matt., xix., 6.

† Rom., vii., 2-3; 1 Cor., vii., 10-16.

brother or a sister is not under bondage in such cases: but God hath called us to peace." The reason of this permission seems to lie in the fact that the conflicts in the home as to the question of religion might be so severe, so constant, so fundamental, as to render that union which marriage is supposed to represent and embody impossible. Legal divorce was, therefore, the simple declaration of a spiritual divorce previously existing. This passage is not antagonistic to the teachings of Christ, for his command had no reference to *mixed* marriages, such as are here considered. His command had reference, moreover, to an ideal standard.* The Master and the Apostle seem to agree in teaching that the union in marriage, as usually constituted, is not to be recognized as severed except for the most serious and fundamental reasons.

It is believed that a return in legislation to this conception of the nature of marriage would tend to restore the family to its proper place in the social order. The less heinous causes as reasons of divorce would thus be eliminated from the statute. For these causes separation might still be allowed, but divorce not.

The objections usually urged against a strict law of

* Meyer, Commentary on 1 Cor., vii., 15, says: "Since *desertion* appears here as an admissible ground for divorce, this has been thought to conflict with Matt., v., 32, xix., 9, and various explanations have been attempted. But the seeming contradiction vanishes if we consider verse 12 (1 Cor., vii.), according to which Jesus has given no judgment on *mixed* marriages; Matt., v., 32, therefore, can only bind the believing consort in so far that he may not be the one who leaves." Lange, Commentary on 1 Cor., vii., 15, also says the writer "here assigns the reasons why a divorce should be allowed on the part of the Christian; and the words cannot simply mean, 'he is not bound to crowd himself upon the other,' and to insist upon the connection, as in the case where both are Christians; but they carry the further implication,—'is not unconditionally bound to the marriage relationship like a slave,' 'is free.'"

divorce are that dissoluteness is thus fostered, and the temptation to commit that act recognized as a sufficient cause of divorce is strengthened. Separation does not carry with it the right of remarriage. It is therefore said that separation tends to induce incontinence. But this evil of separation, under a strict law of divorce, tends to effect its own cure; for the motive of avoiding separation, and of removing the causes of difference, thus gains in force. The large proportion of husbands and wives, knowing that for the lesser offences against the bonds of marriage they cannot secure divorce, would live in comparative harmony. Facility of divorce allures them to trying the strength, and so breaking, of their bonds. Difficulty of divorce, compelling them to waive many differences, insures fewer fractures of the conjugal ties.

The second objection to a strict divorce law, that the temptation to commit the severer offence is strengthened, has an apparent force. The answer lies in the fact that the guilty partner should be by law refused permission of remarriage. In some States this refusal is imposed for at least a certain length of time. The refusal might well be made absolute during the life of the innocent partner. A common motive in securing a divorce is to contract a second marriage. If permission to contract a second marriage be denied, the force of the temptation to commit the more heinous offence would be diminished, if not removed.

That the marital union in which many and serious elements of disunion and discord prevail is an evil, and the parent of evils, is not to be doubted. The chief question relates to the method by which these evils may be made as slight as possible. We believe that the rule will be found wise to grant divorce for adul-

tery, attempt on life, very grave cruelty, and long continued desertion; and that for the lesser offences against the bond, separation only should be permitted. Against this separation, this divorce from bed and board, Mr. Bishop has argued with the learning of a jurist and the eloquence of an advocate. By it, he says, "the injured party, in mockery of redress, is kept under all the burdens of matrimony, and cut off from all its benefits. This proceeding, neither dissolving the marriage, nor reconciling the parties, nor yet changing their natures; having, at least, no direct sanction from Scripture; characterized by Lord Stowell as casting them out 'in the undefined and dangerous characters of a wife without a husband, and a husband without a wife'; by Judge Swift as 'placing them in a situation where there is an irresistible temptation to the commission of adultery, unless they possess more frigidity or more virtue than usually falls to the share of human beings'; by Mr. Bancroft, as punishing 'the innocent more than the guilty'; . . . is, while destitute of justice, one of the most corrupting devices ever imposed by serious natures in blindness and credulity." * Assuredly, this partial divorce imposes evils upon the parties, and the social order as well. As seldom as it is granted, as compared to the frequency of absolute divorce, we venture to believe it should remain as an escape for those unfortunate consorts who cannot live together and who ought to live apart. The simple truth is that most men and most women who are married *can* live together with comparative peace and joy. The knowledge of the legal permission for their divorce for slight offences foment causes of disunion and discord. Strictness of law fosters domestic harmony.

* *Marriage and Divorce*, I., pp. 23-24.

The general principle of divorce legislation is, therefore, that a marriage which is not fulfilling its ends should be declared dissolved by the properly constituted authorities. "A sound public policy concurs with private right in demanding the dissolution of marriages which have failed to accomplish substantially the ends for which they were created." * This general principle seems more true and more safe than to affirm "that any conduct which renders cohabitation impracticable, and consequently justifies in morals a separation, should be made cause to dissolve the marriage." † For expediency may require separation without demanding divorce. Extreme incompatibility, or extreme aversion of the parties each to the other, as in the law of Prussia, may allow, and even necessitate, separation, but absolute divorce for such a reason tends to promote the evil which it is designed to remedy. It originates and fosters aversion, instead of allaying it.

Nor do we believe that judicial separation mitigates immorality to that extent which is surmised. "When parties are married," it has been declared, "in law, yet not in fact, and therefore are forbidden to enter into real marriages, they will be liable, unless they are better, not worse, than the community generally, to commit breaches of the rules of morality, either by promiscuous indulgences or by forming alliances in the similitude of matrimonial, from which a spurious issue may spring." ‡ England, with laws strict as to divorce, and somewhat liberal regarding separation, with gross crimes abundant, is cited in proof. Yet Germany,

* Bishop, *Marriage and Divorce*, I., 27.

† *Ibid.*, p. 28.

‡ *Ibid.*, p. 29.

with divorce laws exceedingly loose, suffers from similar offences to a much greater extent than England.* The various sins against chastity are far more common on the continent than on the island. The looser the law, the more flagrant and the more prevalent are these offences against a pure morality. The inference is that the strictness of the law tends to promote purity of conduct.

The civil policy of South Carolina as to divorce is exceptional among all the codes of the United States; it follows the principle of the Catholic church. With the exception of a short period succeeding the war of the rebellion (law repealed December 20, 1878), this Commonwealth has refused to grant divorce for any cause whatever. That so great severity would result in peculiar evils is evident. It has been found necessary for the law to regulate how large a share of his property a man may give to his concubine. But it is the testimony of a judge of a South Carolina court that "the working of this stern policy has been to the good of the people and the State in every respect."† In

* In England and Wales bastardy diminished from 5.43 to 4.81 per cent in 1865-78. "The German Empire during 1872-9 produced 1,171,957 bastards, or 146,495 a year; i.e., 8.60 of all births were unlawful. In 1879 the rate was 8.62. But the census of 1882 sets the illegitimate births at 164,457, or over one-ninth of the whole. The most corrupt parts of the empire are Würtemberg, which had 11.31 per cent in 1878, but improved to 8.51 in 1879; Saxony, with 13.41, reduced to 12.39 in 1879; and Bavaria, in which the previous average (1865-78) of 15.30 fell to 12.39 in 1879. In 1868 there were 79 districts in Mecklenburg without a child born in wedlock; and about one third of the whole duchy was bastards." *Bibliotheca Sacra*, January, 1885, pp. 61, 65. See Von Oettingen's *Moralstatistik*, 3d. ed., 1882, from which many of these facts are taken. The immorality of Germany furnishes strong arguments against such loose divorce laws as prevail in the empire.

† O'Neill in *McCarty vs. McCarty*. 2 Strob., 6, 11; see Bishop, *Marriage and Divorce*, p. 33.

Ireland, also, a similarly stern ecclesiastical polity has repressed to the lowest rate offences against chastity.

The specific grounds on which divorce should be granted would clearly include adultery, desertion so prolonged as to destroy the union, extreme cruelty, including specially drunkenness confirmed and perilous. Beyond these causes it is difficult to go. Such causes as "smothered hatred, love turned to the reverse, jealousies which no reason can allay, an indefinite jarring of natures in collision, and other purely mental causes, which render the marriage burdensome, and destroy its higher and holier purposes,"* should not be made the ground of divorce, in our opinion, but may be made the ground of judicial separation. To the parties themselves, to their children and to society, we believe, this course is attended with the slightest evils.

* Bishop, *Marriage and Divorce*, I., p. 31.

CHAPTER XII.

THE FAMILY AND MODERN DIVORCE LAWS.

Laws as to divorce in England and American colonies. — General forms of dissolution of marriage: (1) void by cause existing at time of contract; (2) divorce, absolute separation; (3) suspension of marital relationships, partial separation. — Causes in different States rendering marriage void. — Causes in different States sufficient for divorce; adultery, cruelty, habitual drunkenness. — Laws as to divorce in England, Scotland, Ireland, France, Germany, Bavaria, Thuringia, Austria, Hungary, Sweden, Norway, Servia, Russia, Switzerland, Denmark, Belgium, Spain, Portugal, Italy.

THE English colonists of America brought with them English laws. These laws became in the new country common law. For the application of this common law they established courts and forms of legal procedure. The English laws respecting marriage and divorce thus took root in the new soil, and were put into execution by the courts. Down to the middle of the present century the laws in England as to divorce were administered by the ecclesiastical court. Upon these laws the Reformation had little effect. The Catholic doctrine was early amended so that divorce could be granted by the court from the bond of matrimony.* In 1601, however, Archbishop

* "A commission was issued by Henry VIII., and renewed by his son, Edward VI., authorizing Archbishop Cranmer and other leading ecclesiastics to inquire into this subject and report to the Crown the result of their deliberations. These commissioners embodied their opinions and suggestions in the form of a work, which was subsequently published, under the title *Reformatio Legum Ecclesiasti-*

Whitgift set up the rule that the judicial divorce was only partial — one from bed and board. Absolute divorce was to be obtained only by application to Parliament. The rule of the Archbishop, and the custom of Parliamentary divorce, continued till the revolutionary Acts of 1858.

The prevalence of legislative divorce in the mother-country led to its adoption in the colonies. Neither it nor judicial divorce was, however, common.

Though the colonists abolished the ecclesiastical solemnization of marriage, they yet adopted the ecclesiastical opinion as to the indissoluble character of the bond of wedlock. Throughout the colonial period of New York, only four divorces were granted, in 1670 and 1672, and these by a governor who arrogated either to himself or to his council every civil function. In Georgia no court existed earlier than 1798 capable of entertaining suits for divorce. But the old English usage of legislative divorce has gradually been superseded, the constitutions of no less than thirty States prohibiting it. New York, Delaware, and the New England States have not thus restrained their legislatures. Delaware is, however, the only State which is accustomed thus to dissolve marriage.*

carum. Had their proposed emendations been adopted, the quality of indissolubility would no longer have attached to the matrimonial contract; for they advised that, in cases of adultery, malicious desertion, long absence, or capital enmities, the marriage should be dissolved, with liberty to the injured party to marry again. They also recommended that the remedy of divorce *a mensa et thoro* should be entirely abrogated and done away with. The death of the king prevented the consummation of the scheme. See Bishop, *Marriage and Divorce*, I., p. 25.

* In 1881, thirteen divorces were granted by legislature: Noble's *Compendium*, p. 55, to which we are also indebted for aid in preparing this chapter. Stimson's *American Statute Law*, an admirable work, has also been consulted.

The marriage relation may be annulled in either one of three forms: it may be made null and void by a cause existing at the time of the contract; it may be dissolved by absolute separation — *a vinculo matrimonii*; it may be suspended for a longer or shorter period by a judicial separation, known as divorce *a mensa et thoro*.

In respect to the nullity of marriage several causes are recognized. The laws of every State declare that certain degrees of consanguinity and of affinity render marriage either void or voidable.* The fact that a prior marriage remains undissolved is in twenty-three States expressly declared to be sufficient to set aside the new union.† In twenty States ‡ insanity works a similar

* The general rule as to consanguinity is that no one is allowed to marry a lineal ancestor or descendant, brother or sister, nephew or niece, by blood; in New Hampshire, Ohio, Indiana, Kansas, Nevada, a man cannot marry his first cousin; in four States, Minnesota, Wisconsin, North Carolina, and Oregon, no marriage can be contracted "by parties nearer of kin than first cousins"; and in Ohio, Indiana, Nevada, not by those of nearer kin than second cousins. The general rules in respect to affinity are that a man cannot marry his father's widow, nor a woman her mother's husband; a man cannot marry his wife's daughter or his grandfather's widow, nor a woman her husband's son or her grandmother's husband. Marriage between a father-in-law and daughter-in-law, between a mother-in-law and son-in-law, are likewise forbidden. In Virginia and West Virginia a man cannot marry his wife's step-daughter nor a woman her husband's step-son.

† California, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New York, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Vermont, West Virginia, and Wisconsin.

‡ Arkansas, California, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, North Carolina, New York, Oregon, Rhode Island, Virginia, Vermont, West Virginia, Wisconsin.

effect. Nonage in seventeen * and fraud in thirteen States † are likewise causes of nullity.

A dissolution of the conjugal bond may be granted for causes existing at the time of or following marriage. Of the causes existing at the time of marriage judged to be sufficient for divorce these are more generally recognized: impotence, acknowledged in thirty States; insanity, in two States, Georgia and Mississippi; consanguinity, in five; ‡ former marriage, still valid, in at least seven; § pregnancy of wife at time of matrimony, without husband's knowledge or consent, in eight; || conviction of an infamous offence, and concealed at time of contract, in Virginia and West Virginia.

Various causes, also, arising after marriage are recognized as sufficient for the dissolution of the tie. Adultery is the most commonly acknowledged cause. In every State except South Carolina it is laid down as a ground for divorce, and in New York it is the only ground. On the part of the wife, the simple act of adultery is regarded as sufficient to entitle the husband to a divorce. Toward the husband the law in some States is not so strict. For the wife to obtain a decree, it is necessary for the husband not simply to commit the act, but to commit it under aggravating circumstances.

* Arkansas, Indiana, Iowa, Kentucky, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, North Carolina, New York, Pennsylvania, Tennessee, Virginia, Vermont, West Virginia, Wisconsin.

† Arkansas, California, Kentucky, Louisiana, Michigan, Minnesota, Nebraska, Nevada, New York, Pennsylvania, Tennessee, Vermont, Wisconsin.

‡ Florida, Georgia, Maryland, Mississippi, New Jersey.

§ Arkansas, Colorado, Illinois, Kansas, Missouri, New Jersey, Ohio.

|| Georgia, Iowa, Kentucky, Maryland, Missouri, Tennessee, Virginia, West Virginia.

Next to this crime, desertion is most generally recognized. In nearly all States it is a cause for absolute divorce, and in nine it is also cause for limited divorce, and in two States* it is cause for limited divorce only. The statutes of the different Commonwealths differently define the nature of this abandonment. In Alabama, "voluntary abandonment from bed and board for two years next preceding the filing of the bill"; in Massachusetts, "utter desertion continued for three consecutive years next prior to the filing of the libel"; in Missouri, "when a party shall have absented himself or herself without reasonable cause for the space of one year"; in Ohio, "wilful absence"; in Pennsylvania, "wilful and malicious desertion and absence from the habitation of the other, without a reasonable cause, for and during the term of two years"; in Vermont, "wilful desertion for three consecutive years, and when either party has been absent seven years and not heard of during that time";—these represent the various provisions prevailing in representative States. The period of desertion necessary for obtaining a divorce extends from one year, in eight States,† to five, in three.‡ In four States no period is laid down in the statute.

In modern laws cruelty is regarded as a cause allowing divorce. Legal cruelty it is hard to define. Lord Stowell, though declining to define the offence, offers this exposition, which is made the foundation of most definitions: "The causes must be grave and weighty, and such as show an absolute impossibility that the duties of married life can be discharged. In a state of personal danger no duties can be discharged; for the

* New York, North Carolina.

† Arkansas, California, Colorado, Florida, Kansas, Kentucky, Missouri, Wisconsin.

‡ Louisiana, Rhode Island, Virginia.

duty of self-preservation must take place before the duties of marriage. . . . What merely wounds the mental feelings is in few cases to be admitted, where not accompanied with bodily injury, either actual or menaced. Mere asperity of temper, petulance of manners, rudeness of language, a want of civil attention and accommodation, even occasional sallies of passion, if they do not threaten bodily harm, do not amount to legal cruelty.”* The definition given by Mr. Bishop, and one generally accepted, is: “Cruelty is such conduct in one of the married parties as, to the reasonable apprehension of the other or in fact, renders cohabitation physically unsafe to a degree justifying a withdrawal therefrom.”† In no less than twenty-eight States absolute divorces may be decreed for this cause.‡ The offence may be also made a cause for limited divorce only, and in Alabama and Tennessee it can be granted in favor of the wife only. This cruelty is differently characterized in different statutes. It is described in Alabama as “actual violence to person, attended with danger to life or health, or conduct causing reasonable apprehension of such violence”; in California, as “the infliction of grievous bodily injury or grievous mental suffering upon the other by one party to a marriage”; in Louisiana, “cruel treatment of such a nature as to render their living together insupportable”; in Missouri, “such cruel and barbarous treatment as to endanger the life of the other, or indignities

* Case *Evans vs. Evans*, decided 1790.

† *Marriage and Divorce*, I., p. 524.

‡ Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Wisconsin.

rendering the condition intolerable"; and in Vermont "intolerable severity in either party."

Habitual drunkenness is also regarded as a cause of divorce, either absolute or limited. In twenty-seven States it forms the ground for absolute divorce.* The drunkenness sufficient for a suit must be gross and confirmed, and of at least one year's continuance, and it has reference to alcoholic beverages, and not to opium or chloroform. Among other causes for which divorce may be granted, according to modern legislation, are the refusal of husband to support wife, conviction of an infamous crime, and insanity. This neglect of husband to provide for wife must extend in Colorado through a period of at least one year, and in Indiana, Michigan, and Nevada, two years. It is a cause for absolute divorce in ten States.† Insanity at time of marriage acts as an incapacity for entering into a compact, and so renders it void in many States, but insanity arising after marriage is recognized as a cause only in Arkansas. Joining and continuing three years with a religious sect which believes the relation of husband and wife to be void or unlawful is a basis for divorce in Massachusetts, New Hampshire, and Kentucky. Various "omnibus clauses" have at times been introduced into the statutes: in Connecticut, "for any such misconduct as permanently destroys the happiness of the petitioner and defeats the purpose of the marriage relation", in Wisconsin, "when, by reason of his conduct towards her

* Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, Ohio, Oregon, Rhode Island, Tennessee, Wisconsin.

† California, Indiana, Kansas, Massachusetts, Michigan, Nevada, New Hampshire, Ohio, Rhode Island, Vermont.

being such as to render it improper for her to live with him, the court are of the opinion it will be discreet and proper to grant the divorce", and in Florida, "for the habitual indulgence of a violent and ungovernable temper." In Arizona and Washington Territory the law is similarly comprehensive.

Modern English legislation respecting divorce is chiefly comprehended in the statute* passed a generation ago. This law deprived the ecclesiastical courts of jurisdiction in cases of divorce, and gave jurisdiction to a court which was thereby established. It abolished the partial divorce, *a mensa et thoro*, but gave the court power to grant judicial separations. It declares that a sentence of judicial separation "may be obtained either by the husband or the wife on the ground of adultery, or cruelty, or desertion without cause for two years and upward." A decree of absolute divorce may be obtained by the husband on the ground of the adultery of the wife; and a decree may be obtained by the wife on the ground that her husband "has been guilty of incestuous adultery, or of bigamy with adultery, or of rape, or of sodomy, or bestiality, or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensa et thoro*, or of adultery coupled with desertion without reasonable excuse for two years or upwards." No decree of a divorce, according to present law, can be made absolute till six months from the time of its delivery have expired.

The laws of Scotland and of Ireland are not dissimilar to those of England. The Scotch statutes permit divorce only for adultery and for abandonment for a period exceeding four years. The ordinary courts have

* 20 and 21 Vict.

jurisdiction. In Ireland divorce is granted, as formerly in England, only by act of Parliament, and the only offence sufficient is adultery. The laws as to separation are more flexible. It is allowed not only for unnatural crimes, incurable disease, adultery, and prolonged abandonment, but also for extreme incompatibility, especially indicated in abuse on the part of the husband.

In France, the law of 1816 abolished divorce, which the Code Napoleon allowed, and suffered separation alone to remain for the partial severance of the ties of marriage. From 1816 to the passage of the divorce law of June 13, 1882, separation was permitted for these causes — causes which had previously formed the ground for divorce: the adultery of the wife; the adultery of the husband when the circumstances are of peculiar aggravation, as keeping mistress in the house; threats and abuses; and condemnation to an infamous punishment. Separation by common consent is not allowed. The passage of the divorce law of 1882, the result of prolonged and hearty agitation, permitted divorce for these causes.*

* "The fundamental differences between our law of marriage and that of France are of a twofold character — those that are ethical and those that are practical.

"From the *ethical* point of view, our legislation, which is essentially a moral one, frowns upon all irregular sexual relations; does all that is possible to prevent them, and punishes them in their results with an implacability that almost amounts to injustice. It is this spirit which makes marriage easy without making it indissoluble, and, while giving to the seducer a *locus penitentie* by allowing him to legitimize his offspring by marriage after conception, punishes the innocent offspring born prior to marriage by inflicting upon it the irreparable stain of bastardy. Cruel as may be the effect of this provision upon children born prior to marriage, it cannot be said that we can at this stage of our civilization dispense with it, in view of the fact that in Scotland, where legitimation after marriage is allowed, the proportion of illegitimate children exceeds that on the other side

The laws of Germany as to divorce are perhaps more loose than those of any modern State. In the various provinces the local statutes have more or less force; and canon law forms the basis of procedure to a greater

of the border, and in France, where a similar law prevails, the number of illegitimate children, to judge from the statement of Émile de Girardin, himself a bastard, amounts to one-fifth of the entire population.

"The presence of so large a number of bastards does not in any way seem to disturb the moral equanimity of France. To the French law-maker *porro unum necessarium* — *la conservation de la famille*. That the sanctity of the family tie is preserved at the expense of one-fifth of its population, and that society is necessarily disorganized by the birth of that fifth, seem to have no weight with him. A father who has sown his wild oats and left the reaping of them to others, occupying a patriarchal position in a family in which no disproportion of *dots* is to be found; in which every son, after having gone through his period of immorality, brings a suitable fortune to the untried affections of the woman who has been selected for him; in which every daughter is a willing party to the delivery of her person to such son of a similar parent as brings a similar fortune under similar circumstances; a family, generation after generation, inhabiting the same place, worshipping the same traditions, and clinging together with a clannishness which results from perfect satisfaction with the faultlessly balanced alliances that gave rise to it, — this is the result at which the French system apparently aims, and to which it undoubtedly tends.

"It is not fair, however, to the system set forth in the French Code, inspired as it was by the genius of the first Napoleon, to assume that this tendency of French society is a necessary consequence of the dispositions of the law; on the contrary, it appears more probable that these evils, if they exist, result more from the manners and morals of the people than from the provisions of the law itself.

"The *practical* differences between our legislation and that of France result from the general disposition of the Anglo-Saxon to make his way in the world in whatever line his individual characteristics push him, as contrasted with that of the Frenchman to remain in the groove that his ancestors have marked out for him. In the one case the line tends to be one of progress, beginning often without any parental assistance whatever, and ending generally in prosperity; in the other case, it resembles more nearly a circle, starting in life

or less extent according as the religious views of the population incline toward the Catholic or Protestant faith. The law of June 1, 1794, is still in force in all the provinces of Prussia, excepting the Rhenish, wherein the Code Napoleon prevails. According to this law divorce may be granted, and for the following causes: adultery, sodomy, and unnatural crimes which have the force of adultery, malicious abandonment, refusal to perform the conjugal duties, total and incurable impotence appearing after matrimony, insanity lasting more than one year with no hope of cure, attempt on the life of the other party, actions which are a risk to the safety of the other party and which offend or endanger personal liberty or honor, general disagreement either with or without blows, condemnation to an ignominious punishment, the exercise of a disgraceful trade, false accusation of one by the other party of crimes which bring infamous punishment, the illegal and premeditated action of one party in endangering life or occupation, persistence notwithstanding legal warning in a disorderly course of life, refusal of husband to support wife properly after the judge has tried to effect accommodation, invincible aversion between the parties, and mutual consent if there are no children. Mutual consent may also be a cause even if there are children, in case the repugnance is so great as to leave no hope of reconciliation. Any one of this score of offences or of conditions is sufficient in the

under conditions of practically assured success, beginning at the same point where the father began, and ending at the same point where the father ended. The enterprise which makes of the Anglo-Saxon the colonist of the world is the necessary result of the one; the stay-at-home spirit of the Frenchman is no less necessarily the consequence of the other." — Kelly, *The French Law of Marriage, and Conflicts of Laws arising therefrom*. Paris: 1885, pp. 95-97.

Prussian provinces for the granting of absolute divorce.

The laws of Bavaria concede divorce to all citizens, irrespective of religious faith, on the ground of adultery and of circumstances which constitute a moral or material danger to either party.

In Thuringia divorce and separation are regulated more by custom than by statute. Separation is granted for a certain period, and for what are known as the lesser causes. The motives for divorce are divided into two classes, those existing at the time of and those following marriage. The first class represents those causes which are declared to render a marriage null and void. No marriage exists in the case of violence, fraud, deceit of the one as to personal qualities of the other party, error on part of both parties caused by the fraud of a third person, deception as to the reputation of one party as to immoral conduct at least so far as wife is concerned, insanity, impotence, and deception as to property for the purpose of effecting marriage. Among the motives following marriage which are regarded as sufficient to cause its dissolution, are these: violation of the conjugal faith by a carnal act, malicious desertion or refusal to perform conjugal duties, attempt or serious threats on life, abuse, fear for life or safety, condemnation to infamous punishment, habitually vicious conduct, and syphilis. These motives are of absolute force; but the following are left to the discretion of the court; abandonment of the Christian religion, hate and repugnance which cannot be overcome, barrenness, and incurable contagious disease.

Austria and Hungary still retain in force the civil code of 1811 as to divorce. To this law only those

who are not Catholics are subject. In 1856 amendments were made, recalling certain provisions of the canon law, but in 1868 these amendments were struck out, and the former legislation restored. The causes of the dissolution of a marriage are adultery, condemnation to imprisonment for a period of not less than five years, malicious desertion when the place of the dwelling of one is unknown for a year after publication of official summons, attempt on life or safety, grave and repeated ill-treatment, and invincible aversion. In the instance of aversion, separation must be tried before divorce can be granted. The marriage of Jews is dissoluble on mutual consent.

The laws of Sweden admit divorce. The laws of April 27, 1810, still prevail; and allow divorce on the following grounds: adultery, desertion, connection before marriage with person of opposite sex, incurable disease, sentence for life, attempt on life, and insanity. The king can authorize divorce for crime, dissipation, habitual drunkenness, premeditated violence, and incompatibility of character. The old law of 1734, compiled from former laws, permitted separation, but for a determined period only.

The provisions which Norway makes for the dissolution of marriage represent the code of 1687 and the laws of 1750 and of 1857. Many causes are named. Adultery, absence for a period of three years under certain conditions, impotence, condemnation to enforced labor for life, if no pardon is granted within seven years, and mutual consent under certain conditions as to time, include the chief grounds. In the case of mutual consent, divorce can be pronounced only by the king's authority, and a new marriage cannot be contracted without special permission.

Among the somewhat peculiar causes for which Servia grants divorce is the abjuration of the Christian faith. Though thus liberal, the law forbids divorce on the ground of mutual consent. Suits belong to the jurisdiction of the ecclesiastical courts, but before they are entered, it is necessary for the parties to make four distinct attempts at conciliation, one before the curate of the parish, and three before the ecclesiastical superior of the diocese.

In Russia, likewise, all suits for divorce are committed to the ecclesiastical authorities. The civil code of 1833 makes this provision. No decision is reached without the consent of the holy synod. The causes are determined by the ecclesiastical courts. Adultery is supposed to be the only ground, but other causes are admitted, as a penalty which deprives a party of civil and political rights, and prolonged absence without notice. Divorce by mutual consent is expressly excluded.

The laws of Switzerland permit divorce and refuse separation. According to the laws of December 24, 1874, divorce may be granted on the ground of mutual consent, when the condition of affairs seems to necessitate the judgment that dissolution is for the best interest of the parties, adultery, attempt on life, ill-treatment or grave insults, condemnation to infamous punishment, treacherous abandonment for more than two years in case a legal warning to return within six months has been given without effect, and insanity if it has lasted more than three years and been declared incurable.

In Denmark the law of 1683 still prevails. According to its provisions, divorce may be granted for adultery, desertion, impotency, contagious disease,

condemnation to enforced labor for life, and mutual consent. The party offending cannot contract a new marriage within three years from the granting of the divorce.

Belgium yet retains the Code Napoleon. Both separation and divorce are permitted, and for the causes which have in France formed the ground of separation. Holland likewise, under the code of 1836, admits both methods of dissolution, and for similar causes.

The Spanish law respecting divorce is as strict as the laws of Switzerland and Germany are liberal. By the law of February 19, 1878, only those marriages solemnized by the ecclesiastical authorities are recognized as valid, yet the obligation of entering such marriages on the civil register is declared. The law of 1870 admits no other cause of the dissolution of marriage than death. Personal separation is, however, admitted for certain causes. In those causes are included adultery of wife, adultery of husband, followed by public scandal, as in wife's house, or accompanied by complete desertion of wife, excessive abuses or insults, condemnation to infamous punishment, moral or physical violence on the part of husband to compel wife to change religion, attempt on part of husband to prostitute his wife, attempt on part of either to corrupt children, and ill-treatment of children endangering their lives.

The laws of Portugal are similar to those of the sister kingdom. The civil code of 1868 recognizes two kinds of marriage: the religious, celebrated under canonical forms, for Catholics, and the civil marriage, contracted before civil authorities, for those who are not Catholics. Divorce is not allowed. Separation is granted for the causes of the adultery of either wife or husband, condemnation of one of the parties to a sentence for life, abuse and serious insult.

The dissolution of the bonds of marriage is permitted in the kingdom of Italy * on the ground of the adultery of either the wife or the husband when he keeps his mistress in the house or in any other place occasioning public scandal, voluntary desertion, excessive cruelty, threats and gross insults, condemnation of one spouse to criminal punishment when the crime occurred before marriage and other party was not an accomplice, and the failure of husband to provide suitable support. As in Spain and Portugal, separations only are permitted.

* In preparing the sketch of the divorce laws of European States much aid has been derived from a little tract published by the Italian government : *Le Separazioni Personali Coniugi e i Divorzi in Italia e in alcuni altri Paesi*. Roma: 1882. It is characterized by that thoroughness and accuracy which distinguish the publications of this government.

APPENDIX.

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